TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 314.

CLARENCE P. HUNT, APPELLANT,

vs.

THE NEW YORK COTTON EXCHANGE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TENNESSEE.

FILED JUNE 6, 1906.

(20,279.)

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a In the Circuit Court of the United States for the Western Division of the Western District of Tennessee.

THE NEW YORK COTTON EXCHANGE, Appellant,
vs.
CLARENCE P. HUNT, Appellee.

Henry W. Taft, Henry S. Robbins, Chicago, Illinois. Henry Craft, Memphis, Tennessee, Solicitors for Appellant.
Turley & Turley, Carroll, McKellar & Bullington, Memphis, Tennessee, Solicitors for Appellee.
Jno. E. McCall, United States District Judge, Presiding in the Circuit Court.

1 In the Circuit Court of the United States for the Western Division of the Western District of Tennessee.

No. 601. Equity.

NEW YORK COTTON EXCHANGE
vs.
CLARENCE P. HUNT.

Cost-Bond.

Filed January 25, 1906. Dan F. Elliotte, Clerk.

Know all men by these presents, That we, New York Cotton Exchange and He-ry Craft are held and firmly bound unto said defendant Clarence P. Hunt, in the sum of Two Hundred and fifty Dollars; but to be void on condition that the said defendant Clarence P. Hunt do pay and satisfy all costs that may accrue in that behalf in the prosecution of the said suit this day commenced by the said Plaintiff in the Circuit Court of the United States for the Western District of Tennessee at said Memphis, against the said defendant; and also on failure of the said plaintiff to prosecute the said suit with effect; and also on failure of the defendant, if convicted to pay said costs.

Witness our hands and seals, this 25th day of January, 1906.

NEW YORK COTTON EXCHANGE, [L. S.]
By HENRY CRAFT, Att'y. [L. S.]
HENRY CRAFT, Surety. [L. S.]

Approved by and acknowledged before me the 25th day of January A. D. 1906.

DAN F. ELLIOTTE, *Clerk.*

2 In the Circuit Court of the United States for the Western Division of the Western District of Tennessee.

No. 601. Equity.

NEW YORK COTTON EXCHANGE
vs.
CLARENCE P. HUNT.

Original Bill.

Filed January 25, 1906. Dan F. Elliotte, Clerk.

To the Honorable Judges of the Circuit Court of the United States, for the Western District of Tennessee.

New York Cotton Exchange brings this, its bill, against Clarence P. Hunt, and thereupon your orator complains and says:

I. That your orator is a private corporation organized under a special charter granted to it by the State of New York on the 8th day of April, 1871, which was subsequently amended by a further act of the Legislature passed on the 8th day of May, 1880, and is a citizen of the State of New York and has its principal office and place of business in the City of New York; and that said Clarence P. Hunt is a citizen of the State of Tennessee and a resident in said Western District of Tennessee, and doing business in the city of Memphis, in said State, under the name and style of the Memphis Exchange.

3 II. That, as provided in said charter, the purposes for which your orator is incorporated, are "to provide, regulate and maintain a suitable building, room or rooms, for a Cotton Exchange in the City of New York, to adjust controversies between its members, to establish just and equitable principles in the trade, to maintain uniformity in its rules, regulations and usages, to adopt standards of classification, to acquire, preserve and disseminate useful information connected with the cotton interests throughout all markets, to decrease the local risks attendant upon the business, and generally to promote the cotton trade of the city of New York, increase its amount and augment the facilities with which it may be conducted, and to make provision for the widows and families of deceased members", and that your orator is given by its charter power to sue and be sued, to take and hold, by grant, purchase and devise, subject to the provisions of law relating to devises and bequests by last will and testament, real and personal property to an amount not exceeding one million dollars, for the purpose of such Association, and to sell, convey, lease and mortgage the same or any part thereof; also the power to admit new members and expel any member, in such manner as may be provided by its by-laws; but that said charter does not authorize your orator to conduct a telegraph business, nor impose upon your orator the duty of furnishing to the public or any

person whatsoever the knowledge of quotations of the prices made in transactions between its members within its exchange hall.

III. That your orator has at present about 450 members; that it owns in the city of New York an exchange building which cost more then $900,000, and that the yearly expense to your orator of maintaining such building and conducting its exchange is more
4 than $115,000, of which more than $33,000 is realized by yearly assessments upon its members, and that each membership in said exchange is *is* now worth, for the purpose of sale or transfer, the sum of $23,000. That your orator has provided within said exchange building, for the exclusive use of its members, an exchange hall, there many of its members meet every business day between the hours of 10.00 A. M. and 3.00 P. M. (except Saturday, when the market hours are from 10.00 A. M. to 12.00 M.) and sell, for themselves or as brokers for their customers, for present and future delivery, cotton, said transactions aggregating many millions bales of cotton annually; that such purchases and sales for future delivery are permitted by your orator to be made, and are made, only during said market hours and by open *viva voce* bidding; that the knowledge of the prices thus made in said transactions during said market hours upon said exchange has become a species of property of such large value to your orator that telegraph companies are willing to pay to your orator large sums of money for the privilege of receiving instantaneously said quotations and distributing the same to their customers, and many persons throughout the United States who are engaged in the Cotton and Commission business are willing to, and do, pay said telegraph companies therefor, and that your orator realizes from the distribution of said quotations through certain telegraph companies, hereinafter more fully set forth, large sums of money annually, but that said quotations are of such a peculiar kind of property that their value depends upon your orator's power to confine the transmission and distribution thereof to such telegraph companies and other distributing agencies as will contract therefor with your orator, and that, if any person or corporation is permitted to promptly acquire said quotations surreptitiously or by theft,
5 or without paying your orator therefor, such person or corporation can promptly give the same to numerous other persons throughout the United States and the telegraph companies contracting with your orator for said quotations would thus be put at a disadvantage in competition with such persons so obtaining the said quotations without paying your orator therefor, and would thereby be deterred from continuing to pay your orator the prices provided in said contract of your orator with said telegraph companies.

IV. That the manner of collecting and distributing said quotations is as follows:

Experienced persons under the control of your orator are during market hours kept in the exchange hall of your orator, whose duty it is to immediately note the price in every transaction made on said exchange during said market hours, and to immediately transmit by a messenger such price to a telegraph operator employed by your orator on said exchange floor, and he at once transmits

such prices over telegraph wires running to the offices of the Western Union Telegraph Company and Postal Telegraph-Cable Company in the city of New York, whence they are automatically repeated over wires running to many of the larger cities and places in the United States, which wires in said cities and places are connected with and attached to Morse telegraph instruments located in the offices of persons, firms and corporations desiring to use said quotations and contracting with your orator therefor, and that in some large cities said quotations are also re-distributed by means of what is known as the "ticker" system, which consists of a ticker transmitter located in the office of the telegraph company operating said system and connected with sundry telegraaph wires running
6 to various offices and places of business of persons desiring to use, and willing to contract with your orator for, such quotations, each of said wires being connected in each of said offices with an electrical instrument known as a "ticker," by means of which the quotations which are thus electrically transmitted by means of said transmitter over said wires to said ticker, are automatically and immediately printed upon an automatically unrolling roll of paper called a "tape" so that persons in said offices can read the same on said tape, and by means of one or the other of the methods here indicated, the continuous quotations of prices made upon the exchange of your orator can be, and are, communicated to persons in all parts of the United States and in many of the cities and towns thereof, within from 15 to 20 seconds after said prices are made in said transactions on your orator's exchange, and that the yearly expense to your orator of collecting said quotations as aforesaid, is more than $4500.00.

V. That for some time prior to the 14th of July, 1903, your orator permitted the Western Union Telegraph Company, in conjunction with the Postal Telegraph-Cable Company (both engaged in doing a general telegraph business throughout the United States) to gather such quotations through their own employés upon said exchange floor and to distribute the same to their customers without any effective restriction upon the persons entitled thereto; but your orator is informed and believes that said telegraph companies soon proceeded to sell or distribute said quotations to all persons, whether desiring them for legal or illegal purposes, and that by reason thereof many persons purchased said quotations from said telegraph companies for the purpose of using the same in conducting so-called "bucket shops," or the business of gambling or betting upon the fluctuations in the prices of cotton on the *the* ex-
7 change floor of your orator; and that by reason thereof the bucket-shop evil assumed such large proportions and became so serious as to materially effect the volume of legitimate business transactions upon the exchange of your orator by bringing into discredit your orator and its members in the minds of many people who ignorantly supposed from said use of your orator's said quotations as a basis of said bets that said bucket shops were in some way connected with your orator, and thereby were ignorantly led to believe that in dealing in said bucket shops they were dealing with

members of your orator, and thereby the good name and business reputation of your orator and its members were injured and said members were deprived of many customers and large sums of money in emoluments and commissions which would otherwise come to them but for the discredit cast upon your orator through the existence and operation of said bucket shops using your orator's said quotations; and that by reason of the premises aforesaid, your orator found it necessary to, and did, on, towit; the 14th day of July, 1903, terminate said right or license of said telegraph companies to collect your orator's said quotations and soon thereafter your orator adopted certain reasonable regulations calculated to prevent the sale and distribution of your orator's said quotations to persons conducting so-called bucket shops;" and to this end your orator formulated a written contract to be signed by each telegraph company receiving and distributing said quotations.

VI. That thereafter, and on, towit, the 14th day of July, 1903, the Western Union Telegraph Company was required by your orator to, and did, in the name of the Gold & Stock Telegraph Company, which is the name of the company through which the Western Union Telegraph Company conducts its business relating to market news and quotations, execute with your orator the following agreement in writing:

8 This Agreement, Made and entered into this fourteenth (14) day of July, 1903, by and between the Gold & Stock Telegraph Company, hereinafter designated as the Telegraph Company, party of the first part, and the New York Cotton Exchange, hereinafter designated as the Exchange, party of the second part.

Whereas, the Telegraph Company has made application to the Exchange for the privilege of receiving, for distribution to its customers, complete quotations of prices made in all trades and transactions in cotton which shall originate upon the floor of the Exchange, and

Whereas, the Exchange is willing to grant said privilege to said Telegraph Company upon the terms hereinafter set forth:

Now this Indenture Witnesseth:

That in consideration of the premises, and of the covenants and agreements herein contained, the parties hereto mutually agree as follows:

First:—The Exchange agrees at its own cost and expense to collect, furnish and transmit to the Telegraph Company in the manner hereinafter provided, for distribution by the Telegraph Company, as hereinafter provided, full and continuous quotations of the current transactions in cotton which originate and are consummated upon the floor of the Exchange during the hours for trading prescribed by its rules, and also the changes which may occur in the same from time to time. Said quotations shall embrace such as have heretofore been usually supplied by the Exchange to the Telegraph Company, or which the Telegraph Company under the contract between itself and the Exchange, dated the 18th day of February, 1903, has collected, compiled and re-

ported at its own expense for the purpose of distribution to its customers; and while the Exchange does not guarantee that the same shall be absolutely accurate, or shall embrace all the transactions occurring or originating on its Exchange, it will nevertheless use reasonable diligence to make the same as full, complete and accurate as may be practicable.

The Exchange shall furnish booths and instruments on the floor of its Exchange, and wires connecting said instruments with the Telegraph Company's wires, at such point or points in the building belonging to the Exchange, as may be determined by the Exchange; and the Telegraph Company shall be permitted to
9 connect its wires from said building to its Commercial News Department, and its main office, or directly with its offices in other cities as it may deem proper; and the Exchange shall by its own operators transmit said reports hereinbefore provided for from said booths on the floor of its Exchange, directly and promptly over its wires, and the Telegraph Company shall receive the same over its wires by its own operators, the intent of this being to not change the manner or method of transmission of the service from the floor of the Exchange heretofore employed by the Telegraph Company for such transmission. The wires of the Telegraph Company connecting with those of the Exchange may be connected with any other wires by repeater or other device, and the reports shall be taken from them by operators of the Telegraph Company at its offices, and may be retransmitted by the Telegraph Company's operators over other wires to its customers.

The Telegraph Company further agrees, that the wires over which said reports are transmitted to its main office, Commercial News Department, and other offices, shall be so arranged and protected as to render the same, as far as possible, incapable of being tapped, and that the Telegraph Company shall use its utmost endeavors to prevent the said reports, or any part thereof, being taken off said wires, or in any way diverted or distributed, prior to their being taken off at said main office and Commercial News Department or other offices as hereinbefore provided.

And the Exchange further agrees that the Telegraph Company may place and keep in such part or parts of said Exchange as the Exchange shall designate and set apart for the purpose, such printing instruments as may be necessary for the use of the Telegraph Company, it being understood that the matter reported thereon is to be so reported solely for the Telegraph Company and not for the Exchange or its members, and it being further understood that such printing instruments are not to occupy any more space than the Exchange or its officers shall deem it convenient to set apart therefor.

Second:—The Telegraph Company shall have the right to serve said quotations to members of the Exchange at their offices or branch offices, and shall charge such members of the Exchange for the use of tickers delivering such quotations in their offices in New York City, not exceeding Twenty Dollars per month for each ticker.

The Telegraph Company shall have the right to serve said continuous quotations to all persons, firms, corporations and organizations in New York City and elsewhere whenever the Telegraph Company may desire to serve them including any other Telegraph Company owned, leased or controlled by it or with which it now has or may hereafter have any operating contract or other arrangement for exchange of business, but not to persons, firms or corporations who, or which may be directly or indirectly engaged in the promotion or maintenance of bucket shops or other places where such continuous quotations are used as a basis for bets or other illegal contracts based upon fluctuations of the prices of cotton dealt in on said Exchange, together with the right to collect its tolls and charges therefor, it being understood that all tolls and charges so collected shall belong to and be retained by the Telegraph Company.

Nothing herein contained shall be construed as imposing upon the Telegraph Company the duty to investigate and determine the character of the business conducted by any person, firm or corporation applying for or receiving said continuous quotations, but the Telegraph Company shall not under any circumstances directly or indirectly, furnish said continuous quotations to any person, firm, corporation or organization whether members of the Exchange or not, until such person, firm, corporation or organization shall have submitted an application in writing to the said Exchange in such form as the said Exchange shall provide, and until said Exchange has approved of said application. And in the event the Exchange shall become satisfied, that any person, firm or corporation, who or which has been approved by it, is no longer acceptable to it, then it shall so notify the Telegraph Company which shall at once cease to furnish said continuous quotations to said person, firm or corporation, and in the event that the Telegraph Company has installed tickers or wires in the office or place of business of such person, firm or corporation for the purpose of furnishing said continuous quotations, it shall at once remove said tickers or wires, upon receipt of notice from the Exchange to that effect.

Applications submitted to the Exchange either directly or through the Telegraph Company shall be acted upon promptly by the Exchange, which shall notify the Telegraph Company of their approval or disapproval within thirty days after the receipt of each application. If the Exchange shall not, within said time notify the Telegraph Company at its office in New York City of the disapproval of any application, then said application may be accepted by the Telegraph Company which may thereupon transmit said quotations to said applicant.

Whenever the Telegraph Company shall obtain and deliver to the Exchange an application for said quotation service from any person, firm or corporation who at the time of making said application is receiving said quotations with the approval of the Exchange, then the Telegraph Company may furnish said quotations on said application without waiting for an approval by the Exchange as hereinbefore provided in other cases.

11 The Telegraph Company, however, shall not be required to remove any of its tickers or wires or to discontinue service furnished by any other means, which are under restraint by injunction of the Courts, during the pendency of such injunction.

In cases where an application has been approved by the Exchange, and the Telegraph Company has been serving the quotations under the provisions of this contract, and the Exchange shall give notice to the Telegraph Company to discontinue said service as provided herein, and legal proceedings shall thereupon be commenced against the Telegraph Company or the Exchange, on account of such discontinuance, said proceedings shall be defended by said Exchange, which shall and hereby does agree to pay all counsel and attorneys' fees, costs, charges, damages, fines, expenses and penalties to which the said Telegraph Company may be put by such discontinuance or refusal to serve said quotations.

In cases brought against the Telegraph Company the Exchange may defend by its own counsel at its own expense in the name of the Telegraph Company.

In cases where an application has not been approved by the Exchange, and legal proceedings shall be thereupon commenced against the Telegraph Company on account of its refusal to furnish said quotations, the Telegraph Company shall at its own cost and expense defend such litigation and shall use diligent efforts to secure the removal of any injunctions obtained in said causes, in cases in which the Exchange may so desire or request.

In cases were an application has not been approved by the Exchange and legal proceedings shall thereupon be commenced by such applicant for said quotations against the Exchange on account of its refusal to permit the Telegraph Company to serve said quotations, the Exchange shall, at its own cost and expense defend against said litigation thus instituted against it.

Third:—The Exchange agrees that it will not grant the privilege of receiving and transmitting or using, nor will it furnish to any person, party, firm or corporation other than the Telegraph Company, and the Postal Telegraph Company, any quotations originating on the floor of the Exchange, nor will the Exchange so far as it can lawfully prevent the same, permit, suffer or allow any of its members to transmit, distribute or deliver for sale, any of the said quotations originating on said Exchange, nor will said Exchange do any act, whereby any other person, firm or corporation other than the Telegraph Company, party hereto, and the above mentioned Postal Telegraph Company, shall acquire any right to receive, use, transmit or deliver for sale or distribution, any of the said quotations originating on the said Exchange.

12 The Exchange may grant to the Postal Telegraph Cable Company the same right to receive and transmit the aforesaid quotations only as is hereby granted to the Telegraph Company and in that case the Exchange shall require said Postal Company to execute a contract upon the same terms and conditions all and singular, and in the same manner as herein set forth, except as the amount to be paid thereunder which shall be not less than the sum of Thirty-

three Hundred and Ninety-six Dollars ($3,396.00) per annum in cash, so long as no greater use of said matter is made by said Postal Company than at present, it being understood and agreed that in case said Postal Company shall at any time actively compete with the Telegraph Company in distributing and selling said matter, the Exchange shall require said Postal Company to pay the same price therefor as is herein agreed to be paid by the Telegraph Company.

The quotations shall be delivered by the Exchange to the Telegraph Company and to the Postal Company at the same time, and the Exchange may arrange with the Postal Company for delivering the quotations to it either by wire in the same manner as to the Telegraph Company, or in manuscript at the Postal Company's office in the Exchange, or in any other manner desired by the Postal Company which shall not give it any advantage over the Telegraph Company as to time in receiving said quotations from the Exchange.

For the purpose of protecting the Telegraph Company against the use of any quotations originating on said Exchange by parties not entitled to them, the Telegraph Company may prosecute by suit, injunction or other legal remedies proper and suitable for the prevention or stoppage of such competitive use either in its own name or in the name of the Exchange or its proper officers, any party or parties obtaining or using said quotations, not entitled to them, whether obtained from the Exchange or its members, officers or employees or otherwise, and in case the Telegraph Company shall sue and proceed in the name of the Exchange, the Exchange shall by its proper officers do all such proper acts and things and sign all such proper and necessary papers, in order to enable the Telegraph Company to conduct said proceedings with due diligence and effect. All such suits and other legal proceedings whether carried on by the Telegraph Company in its own name, or in the name of the Exchange, shall be at the sole cost and expense of the Telegraph Company, and the Telegraph Company agrees to indemnify and save harmless the Exchange of and from all damages, expenses, cost, charges and fees incurred in or arising out of any such suit, or proceeding.

Fourth:—As compensation for the privilege of receiving
13 and serving said quotations, hereby granted by the Exchange to the Telegraph Company, the Telegraph Company agrees to pay to the Exchange the sum of Thirteen Thousand Five Hundred and Eighty-four Dollars ($13,584.00) per annum in equal installments of Eleven Hundred and Thirty-two Dollars ($1,132.00) at the close of each month, during the continuance of this agreement, and in case the Telegraph Company shall make default in the payment of any such installment for the period of fifteen days after the same becomes due, the Exchange may forthwith terminate such privilege without notice.

Fifth:—For the purpose of this agreement, the term "member of the Exchange" shall be construed to include any firm one or more of whose partners are members of the Exchange, and the term "continuous quotations" wherever used in this agreement, shall be construed to mean every service of quotations wherein the price of cotton shall be quoted oftener than at intervals of fifteen (15) minutes.

The Telegraph Company shall have the right to serve to its customers, quotations at intervals of more than fifteen minutes, without submitting applications therefor to the Exchange.

Sixth:—It being the intention of this agreement that the quotations to be furnished by the Exchange to the Telegraph Company shall be substantially such as have been furnished in the past by the Exchange to the Telegraph Company or such as have been collected, compiled and transmitted by the Telegraph Company itself, under the contract of February 18, 1903, and the nature of the business rendering it impossible to insure absolute accuracy or completeness in said reports, it is especially understood, that while the Exchange will use reasonable diligence in collecting and transmitting said quotations as fully, completely and accurately as may be practicable, yet it shall not be liable to the Telegraph Company or any of its customers for any delays, inaccuracies, errors or omission in said quotations, or for any damages arising therefrom or occasioned thereby.

Seventh:—The parties hereto agree that if at any time hereafter, and before the expiration of this contract, any dispute or difference shall arise between them concerning the true intent, meaning or construction of anything contained in this contract, or concerning any matter included within the spirit or scope thereof, or concerning the acts or omission of the Exchange or the Telegraph Company, then and so often as a dispute or difference shall arise, any and all such matters in difference shall be submitted and referred to the award and determination of three arbitrators to be chosen one by the Exchange, another by the Telegraph Company, and the third by the two chosen, and the decision or award of any two of the arbitrators, in writing, shall be binding and final between the Exchange and the Telegraph Company, and shall be carried out and performed by the said Exchange or the Telegraph Company as the case may be.

14

Eighth:—The Exchange hereby agrees that in passing upon applications for said continuous quotation service presented by the Telegraph Company and the Postal Company, the Exchange will act without discrimination as between them, and whenever the Exchange shall have before it at the same time applications from the same person, firm or corporation presented both through the Telegraph Company, party hereto, and said Postal Company, if it approves said applications, it shall approve them both at the same time and shall notify at the same time both of said Telegraph Companies of such approval. This shall apply either when an application is approved affirmatively or by the failure of the Exchange to act upon any application.

Ninth:—The provisions of this agreement shall take effect on the first (1st) day of August, 1903, and shall be and continue in force for and during the full term of one year from said date, and shall further continue after the expiration of said term, from year to year, unless either party shall give written notice of termination at least thirty days prior to the expiration of said term; and after the close of said term of one year, either party may terminate this agreement at the end of any contract year after having given notice in writing

of an intention so to do, at least thirty days before the close of such contract year.

The agreement between the Gold & Stock Telegraph Company and the New York Cotton Exchange, dated the eighteenth (18th) day of February, 1903, for outgoing continuous quotations is hereby cancelled.

In Witness Whereof the parties hereto have hereunto set their hands and seals, the day and year first above written.

THE GOLD & STOCK TELEGRAPH COMPANY.

[SEAL.] By R. C. CLOWRY, *President.*

A. R. BREWER, *Secretary.*

THE NEW YORK COTTON EXCHANGE,

[SEAL.] By R. P. McDOUGALL, *President.*

HENRY H. WHEELER, *Secretary.*

15 and that on the 15th day of July, 1903, the Postal Telegraph Cable Company, was required to, and did, also execute with your orator a contract of the same import and effect; and that said two contracts are still in full force and effect; *and that said two contracts are still in full force and effect,* and said Western Union Telegraph (and its sub-company, the Gold & Stock Company) and said Postal Telegraph-Cable Company respectively, have been, since the dates of said contracts, and are now, receiving from your orator its said continuous quotations thereunder, and that no other person or corporation has sought or acquired from your orator the right to sell or distribute its said quotations.

VII. That immediately after the execution of said contracts your orator, as in said contract contemplated, furnished to said telegraph companies a form of application in writing to be made to your orator for such quotations and to be signed by every person thereafter applying to them for, or desiring to receive, your orator's said quotations, which said application is as follows:

16 *Application for Continuous Cotton Quotations.*

——, 190-.

To the Telegraph Company:

We hereby apply to you for the continuous market quotations of the New York Cotton Exchange, and we represent and agree with you, and with the New York Cotton Exchange, from which you under contract have acquired the right to distribute said quotations,

1. That our business is and shall be the business of —— and that we are not keeping or causing to be kept, and will not keep or cause to be kept, any bucket shop, or any office, store, or other place wherein is conducted or permitted the business of making, or offering to make, contracts, agreements, trades or transactions, respecting the purchase or sale, or the purchase and sale, of any cotton, wherein both parties thereto, or the undersigned, contemplate or

intend that such contracts, agreements, trades or transactions shall be, or may be, closed, adjusted or settled according, or with reference to, the public market quotations of prices made on any exchange upon which the cotton referred to in said contracts, agreements, trades or transactions is dealt in, and without a *bona fide* transaction on such Exchange, or wherein both parties, or the undersigned, shall contemplate or intend that such contracts, agreements, trades or transactions shall be, or may be, deemed closed or terminated when the public market quotations of prices made on such Exchange for the cotton named in said contracts, agreements, trades or transactions shall reach a certain figure; and we agree that we will not use, or allow any one else to use, such quotations, or any of them, for any such purpose or in such bucket shop.

2. We further agree with you, and with the said New York Cotton Exchange, that said quotations are to be received by us only for our private and individual use, and that said quotations will be used only in our said business; and that we will not sell or communicate or otherwise give said continuous quotations to any news distributing company, or telegraph company, or other person or corporation, nor allow any person or corporation whatsoever, to take, directly or indirectly, said continuous quotations from said office, or to make a wire connection with the instruments or wires in said office over which we receive said quotations. But nothing herein shall preclude us from transmitting said quotations from any branch office of ours, nor to any of our correspondents, provided that before transmitting said continuous quotations to any such correspondent, we first obtain in duplicate (one of which shall be at once delivered to said New York Cotton Exchange through said Telegraph Company) an agreement signed by such correspondent, in which said correspondent shall agree with you, and with said Cotton Exchange, to abide by and comply with Clauses 1, 2 and 3 hereof. If the undersigned shall transmit, or permit to be transmitted, said quotations to any person, firm or corporation, who shall not have first signed a correspondent's agree- *said quotations to any person, firm or corporation, who shall not have first signed a correspondent's agree*ment as above provided, the undersigned hereby agrees that said New York Cotton Exchange may sue the person, firm or corporation to whom said quotations are thus transmitted, to prevent the receipt or use of said quotations by said person, firm or corporation, without making the undersigned a defendant thereto, Provided the undersigned does not, or in case of a partnership, all the members thereof do not, reside within the jurisdiction of the Court in which said suit is brought. By continuous quotations" in this Clause 2 is meant quotations wherein the price of cotton shall be quoted oftener than at intervals of 15 minutes.

3. We further agree that a strict compliance with the above provisions is and shall be a condition precedent to our right to a continuance of said quotations, and agree if we shall violate either of the above provisions, then you shall have the right at once, and without notice, to cut off and cease furnishing said quotations.

We further agree with you that you shall not be pecuniarily liable

for the accuracy of the quotations which you may furnish under this application, nor for errors, delays or omissions in the service.

This application shall become a contract binding upon us when accepted by you.

—— ——.

[NOTE.—Each applicant will sign two copies of this form.]

17 VIII. And your orator is informed and believes, and charges the fact to be, tha- every person now, or since shortly after making of said contracts, receiving said quotations from either of said companies, had executed and delivered an application subsequently in the form above set out, and such application has, before the delivery of any quotations thereunder, been approved and accepted by your orator, except in a few instances, where persons who were receiving said quotations from the Western Telegraph Company prior to the execution of said contracts, have, since the execution of said contracts, secured temporary injunctions in suits brought against said Western Union Telegraph Company (your orator not being made a party to such suits) to enjoin said telegraph company from withholding or withdrawing said quotations from such persons, upon the ground that such persons were not obliged to sign such application for the quotations, nor secure your orator's approval thereof, but were entitled to the quotations without either such application or approval.

18 IX. That said defendant, Clarence P. Hunt, has never delivered to either of said telegraph companies or your orator any application in the form above described, nor has your orator consented that said defendant should receive its quotations, but that on, towit; July 14, 1903, the said Clarence P. Hunt was receiving from said Western Union Telegraph Company said continuous quotations of your orator, and that your orator, avers on information and belief, that thereafter said Western Union Telegraph Company notified said Hunt of the making of said contract between your orator and said telegraph company, and that thereunder said telegraph company, would be required to, and would cease furnishing to said Hunt said quotations and such application should have been approved by your orator, as in said contract provided; and that thereupon, said Hunt declined and refused to make such application, but in lieu thereof, and on, towit; July 31, 1903, said Hunt with others, filed in the Chancery Court of Shelby County, Tennessee, a petition against said Western Union Telegraph Company, to enjoin it from withdrawing or ceasing to furnish to said petitioner your orator's said quotations; and that thereupon an *ex parte* injunction was issued against said telegraph company as in said petition prayed; that thereafter said company filed its answer to said petition, setting up the said contract with your orator, and denying the right of said petitioner to the relief in said petition prayed, and thereupon, said cause came on for final hearing upon bill and answer, and on —— 190–, a judgment was entered for defendant; whereupon said Hunt and others perfected an appeal from said judgment to the Supreme Court of Tennessee, which on, towit; the

15th of June, 1905, reversed said decree without deciding the merits, and for the reason that said Chancery Court should not have disposed of said cause upon bill and answer, but should have awaited the taking of evidence therein, and that said cause is now pending and undisposed of in said Chancery Court, and said injunc-
19 tion is still in force; and that by reason of said injunction, and not otherwise, said Western Union Telegraph Company has been, and now is, furnishing to said Clarence P. Hunt, and said Hunt has been and now is receiving the continuous quotations of your orator.

X. That such unauthorized receipt and use of said quotations by said defendant is calculated to and in time will, if not entirely stopped, seriously impair the value to your orator of its quotations, and that, if even one person within the jurisdiction of this Court be allowed to secure such quotations without the restrictions as to the use thereof which your orator imposes as aforesaid, such person can furnish them to all the bucket-shops and other persons within the United States desiring them, and thus entirely defeat the efforts of your orator to prevent their use in bucket shops as a basis of their illegal bets, and materially impair the right of your orator to derive a revenue from the distribution of said quotations.

XI. That you orator is advised by its counsel that there exists no remedy at law adequate to protect orator's right of property in said quotations against said efforts of said defendant to destroy the same, as actions at law for damages against each person getting said quotations would be impracticable because giving rise to a multiplicity of suits and because the ascertainment of the exact or approximate amount of money damage to your orator would be difficult, if not impossible; and that hence, the only adequate jurisdiction
20 for the protection of your orator's property in such quotations is that of a court of chancery, and the only adequate remedy, a writ of injunction issuing therefrom, permanently restraining the said defendant from using or distributing said quotations or receiving the same from either of said telegraph companies until he shall have made application and be further enjoined from receiving said quotations in any other way or from other person or corporation. And your orator further avers that the amount involved and matters in dispute, exclusive of interest and costs, is much more than the sum of $2,000.00.

In tender consideration of which and forasmuch as your orator is remediless in the premises, at and by the strict rules of common law, and is relieved only in a Court of equity where matters of this nature are properly cognizable and relievable, and to that end that the said Clarence P. Hunt may true, direct and complete answer make to this bill, but not under oath (answer under oath being hereby waived); and that a temporary injunction may immediately issue, and upon the final hearing hereof be made perpetual, restraining said Clarence P. Hunt either acting in his or its own behalf, or as a member of any firm, or as an agent or officer of any other person, firm or corporation, and also each and every of the agents, employes and servants of each of said defendant, from receiving, using, selling or distrib-

uting, directly or indirectly, the quotations of your orator, or any of them, and from having, maintaining or permitting, any telegraph or other wire running into or through his, its or their office, over which said quotations are passing and from aiding, abetting or assisting, directly or indirectly, any person, firm or corporation in receiving, using, selling or distributing said quotations, until it, he or
21 they, or the person, firm or corporation for which they or any of them shall be acting, shall have first lawfully acquired the right to receive said quotations either by contract or purchase from your orator, or, with your orator's consent and approval, from one of the telegraph companies authorized by your orator to distribute said quotations. And that your orator may have such other and further relief in the premises as will fully protect your orator's property right in said quotations, and as to your honors shall seem meet.

May it please your Honors to grant unto your orator a preliminary and permannent injunction angainst the said defendant as above prayed, and also a writ of subpœna of the United States directed to said Clarence P. Hunt commanding him on a day certain to appear and answer this bill, and to abide by and perform such decree as may be entered by this Court.

NEW YORK COTTON EXCHANGE,
By HENRY CRAFT, *Its Counsel.*

HENRY W. TAFT,
HENRY S. ROBBINS,
Counsel for Complainant.

UNITED STATES OF AMERICA,
State of New York, County of New York, ss:

William V. King, being first duly sworn, deposes and says that he is the Superintendent of the New York Cotton Exchange complainant in the foregoing bill of complaint, and knows the contents thereof, and that the allegations of said bill are true of his own knowledge, except as to those matters herein stated to be upon information and belief, and as to those allegations he believes said bill to be true.

WILLIAM V. KING.

Subscribed and sworn to before me this 17th day of January, A. D. 1906.

[SEAL.] L. F. FROELICT,
Notary Public.

22 UNITED STATES OF AMERICA,
Western Division of the Western District of Tennessee.

In the Circuit Court of the United States Within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit thereof.

Proceedings had in said Court at a regular term thereof, begun and held for its November Term, A. D. 1906, at the United States

Court House in the City of Memphis, in said District, on to-wit: the 25th, day of January, A. D. 1906, in the following cause, towit:

No. 601.

NEW YORK COTTON EXCHANGE
vs.
CLARENCE P. HUNT.

Upon consideration of the Bill this day filed herein and complainant's motion for a preliminary injunction, It is ordered that notice issue herein to defendant to appear here on the 6th day of February, 1906, and show cause if any he has why the preliminary injunction should not be granted according to the prayer of said bill.

23 In the Circuit Court of the United States for the Western Division of the Western District of Tennessee.

No. 601. Equity.

NEW YORK COTTON EXCHANGE
vs.
CLARENCE P. HUNT.

Order to Show Cause upon Complainant's Petition.

To Clarence P. Hunt:

Please take notice that upon consideration of the Bill of the New York Cotton Exchange, filed in this Court on this the 25th, day of January, A. D. 1906, against Clarence P. Hunt, and it appearing from the prayer of said Bill that the complainant desires to make application for the issuance through this Court of a preliminary injunction as set forth in the bill, and a motion having been made for the fixing of a time at which the prayer of complainant in this regard may be considered, the Court does now fix 9 o'clock a. m., Tuesday February 6th, 1906, as the time at which such application will be considered at the chambers of this Court at the Custom House, in the City of Memphis, State of Tennessee, and the Clerk is now hereby directed to give notice of the filing of the bill in this cause to the defendant, Clarence P. Hunt, and that he be served with copy of the bill herein at least Five days before the said 6th day of February, A. D. 1906, and at such time and place the said Clarence P. Hunt is ordered to be present and show cause, if any, he has, why the preliminary injunction should not be granted as prayed for.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said Circuit Court at said Memphis, this the 25th, day of January, A. D. 1906, and the 130th year of American Independence.

[SEAL.] DAN F. ELLIOTTE, *Clerk.*

(Over)

Marshal's Return.

This Order to show cause, together with a copy of same and also a copy of the Bill in this cause came to hand on the date of its issuance, and I executed same at Memphis, Tennessee, on the 27th day of January, 1906, on Clarence P. Hunt by reading and making known the contents of same to him and further, by leaving copies of both this order and of the Bill in this cause with him.

This 27th day of January, A. D. 1906.

FRANK S. ELGIN, *U. S. Marshal.*
By JNO. B. JOPLIN, *Deputy.*

24 In the Circuit Court of the United States for the *for the* Western District of Tennessee.

No. 601.

NEW YORK COTTON EXCHANGE
vs.
CLARENCE P. HUNT.

Affidavit of John Costelloe.

Filed January 25, 1906. Dan F. Elliotte, Clerk.

John Costelloe, being first duly sworn, says that he is, and has been since May, 1903, Superintendent of the Postal Telegraph-Cable Company, and that as such he has charge of the distribution by said Telegraph Company of the market quotations of the New York Cotton Exchange. That said Postal Telegraph-Cable Company does not furnish, and has not since May 1st, 1903, furnished, the continuous quotations of the New York Cotton Exchange to Clarence P. Hunt; and that said Postal Telegraph-Cable Company furnishes said continuous quotations, and has since May, 1903, furnished the same, only in accordance with the provisions of the contract between said New York Cotton Exchange and said Postal Telegraph-Cable Company, and only to persons, firms or corporations whose applications therefor have been transmitted to, and acted upon favorably by, said Cotton Exchange, as in said contract provided; and that said Clarence P. Hunt has never made application for said quotations to said Postal Telegraph-Cable Company in the manner provided by said contract.

JOHN COSTELLOE.

Subscribed and sworn to before me, this 16th day of January, A. D. 1906.

[SEAL.] THEODORE L. CUYLER, *N. P.*,
Notary Public, Kings County.

Certificate Filed in N. Y. Co.

In the Circuit Court of the United States for the Western District of Tennessee.

No. 601.

NEW YORK COTTON EXCHANGE
vs.
CLARENCE P. HUNT.

Affidavit of W. J. Dealy.

Filed January 25, '06.

W. J. Dealy, being first duly sworn, says that he is, and has been since March 30, 1893, Superintendent of the Commercial News Department of the Western Union Telegraph Company, and as such has general supervision of the distribution by said Western Union Telegraph Company and the Gold & Stock Telegraph Company of the quotations of the New York Cotton Exchange, and that the Western Union Telegraph Company and its sub-company, the said Gold Stock Telegraph Company, since August 1, 1903, have furnished said continuous quotations only in accordance with the provisions of the contract between the said New York Cotton Exchange and Western Union Telegraph Company, and only to persons, firms or corporations whose applications therefor have been transmitted to, and favorably acted upon by, said Cotton Exchange, as in said contract provided, except in the case of the firm of Morehead Randolph & Co., in Memphis, Tenn., which had paid in advance for said continuous quotations for a period of six months, which period had not expired upon August 1st, 1903, and which firm, after said 1st day of August, 1903, obtained an injunction against the Western Union Telegraph Company preventing said company from complying with the provisions of said contract, and except in several instances where said Telegraph companies have been, and are now, prevented from complying with said contract and the provisions thereof respecting the distribution of said quotations, by injunctions obtained against said companies, or one of them, in suits brought against one or both of said companies by persons receiving the quotations from one of said companies before the execution of said contract between said Western Union Telegraph Company
26 and said Cotton Exchange, which injunction restrained the Western Union Telegraph Company from with drawin- said quotations from the plaintiffs in such suits.

That on or about, to-wit: the 18th day of July, 1903, said Western Union Telegraph Company gave Clarence P. Hunt of Memphis, Tennessee, a notice or letter, addressed to the Memphis Exchange, of which as deponent is informed and believed C. P. Hunt was at said date the Manager, informing said Hunt of the existence and requirements of said contract between said Western Union Telegraph Company and said New York Cotton Exchange, and that thereunder said Western Union Telegraph Company would be required to

terminate the service to said Hunt of said continuous quotations of said New York Cotton Exchange unless said Hunt should make an application for said quotations, and unless the same should be accepted by said Cotton Exchange, as in said contract provided, a copy of which letter or notice is hereto attached as Exhibit "A." That, as deponent is informed and believes, said Hunt did not comply with said request, nor did he then, nor has he ever, furnished to said Western Union Telegraph Company or to said Gold & Stock Telegraph Company, any such application for said quotations but that, as deponent is informed and believes, after the receipt of said notice, said Hunt with others, instituted in the Chancery Court of Shelby County, Tennessee, a suit against said Western Union Telegraph Company to enjoin it from withdrawing the continuous quotations of the New York Cotton Exchange, which said Western Union Telegraph Company was then furnishing to said Hunt at his office in the City of Memphis, and that upon said petition an *ex parte* injunction issued as prayed therein. That, as deponent is informed and believes, in said suit said telegraph company appeared by counsel and filed an answer setting up the contract of said Western Union Telegraph Company with said Cotton Exchange, the giving of notice by said Telegraph Company to said Hunt, the failure of said Hunt to make an application as in said contract provided, and seeking the dissolution of said injunction and the dismissal of said suit, but that said suit is still pending and undisposed of, and said injunction is in force, and that by reason thereof, and not
27 otherwise, said Western Union Telegraph Company is now furnishing to said Hunt at his office in Memphis said continuous quotations of said complainant.

W. J. DEALY.

Subscribed and sworn to before me, this 17th day of January, A. D. 1906.

CHARLOTTE A. VAN BRUNT,
Notary Public,
[NOTARIAL SEAL.] *Notary Public, Kings County.*

Certificate filed in New York. No. 5.
My Commission Expires —.

EXHIBIT "A."

Commercial News Department, Wm. J. Dealy, Sup't.

NEW YORK, *July* 18, 1903.

Memphis Exchange, 38 Madison Street, Memphis, Tenn.

GENTLEMEN: The New York Cotton Exchange will on the first day of August 1903, withdraw from the Western Union Telegraph Company and the Gold & Stock Telegraph Company the privilege the Telegraph Companies heretofore exercised of having reporters upon the floor of the Exchange to collect quotations of sales of

cotton for the Telegraph Companies' Customers. The New York Cotton Exchange in view of the system heretofore prevailing, by which the Telegraph Companies Collected these quotations, and thereafter sold the same to their customers, has determined on and after August 1st, 1903, to exclude the representatives of the telegraph companies from its floor, but will itself collect these quotations, and deliver them to the telegraph companies, under the provisions of a contract which permit the telegraph companies to transmit and deliver these quotations only to such persons as shall have made an application for such service upon a form prescribed by it, and who shall have such aplication approved by the New York Cotton Exchange.

This is to advise you therefore, in view of the change in
28 the relation of the telegraph companies, to these quotations, whereby they become simply the transmitter of the quotations which are the pr-perty of the Cotton Exchange, that unless the prescribed application is duly signed by you and the approval of the New York Cotton Exchange secured on or before July 31st, 1903, it will be the duty of these companies to discontinue the services to you of the quotations of cotton from and after the close of business of the 31st day of July 1903.

Respectfully, WM. J. DEALY, *Sup't.*

29 In the Circuit Court of the United States for the Western Division of the Western District of Tennessee, at Memphis.

No. 601. Equity.

NEW YORK COTTON EXCHANGE
vs.
CLARENCE P. HUNT.

Plea to Jurisdiction.

Filed Feb'y 6, 1906. Dan F. Elliotte, Clerk.

The Defendant Clarence P. Hunt comes in person and by attorney, and not waiving the objection appearing on the face of the bill that the plaintiff is a corporation of the State of New York and has not filed a Copy of abstract of its charter in the office of the Secretary of State, of the State of Tennessee, and is not authorized to own any property or to do business therein, nor the objection that the defendant, as set out in the bill, is receiving the quotations described in the bill under the protection of an Injunction granted him and now in force under the decree of the Supreme Court of the State of Tennessee, in a suit yet pending and undisposed of in the Chancery Court of Shelby County, Tennessee, a Court having complete jurisdiction between this defendant as plaintiff in such suit, and The Western Union Telegraph Company, from whom this defendant is receiving the said quotations as alleged in the bill as defendant, for a plea to the bill herein filed against him says:

That the subject matter of the controversy as set out in the bill to-wit: the matters in dispute exclusive of interest and costs does not amount to the sum of Two thousand ($2000.00) dollars.

Wherefore he prays that this suit may be dismissed for want of Jurisdiction.

THOS. B. TURLEY AND
W. H. CARROLL,
For Respondent.

30 UNITED STATES OF AMERICA,
Western Division of the Western District of Tennessee:

In the Circuit Court of the United States Within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit thereof.

Proceedings had in said Court at a regular term thereof, begun and held for its November Term, A. D. 1905, at the United States Court House in the City of Memphis, in said District, on to-wit: the 7th day of February, A. D. 1906, in the following cause, to-wit:

No. 601.

NEW YORK COTTON EXCHANGE
vs.
CLARENCE P. HUNT.

This cause came on to be heard, pursuant to notice served upon defendant by complainant of its application for temporary injunction, and also upon the sufficiency of the plea of defendant filed on the 6th day of February, to the jurisdiction of the Court; and it is now Ordered and Adjudged that the plea is sufficient, and complainant is granted leave to take issue thereon; and it appearing that complainant has joined issue, the cause is now set for hearing before the Court, at 9 o'clock on Monday, the 5th day of March, 1906, upon the proof that shall be then submitted upon the issue joined.

The hearing of the motion for the granting of a temporary injunction is continued until that date.

O. K.
TURLEY & TURLEY,
For Hunt.
HENRY CRAFT,
For Compl't.

31 In the Circuit Court of the United States for the Western District of Tennessee.

No. 601.

NEW YORK COTTON EXCHANGE
vs.
CLARENCE P. HUNT.

Replication.

Filed Feb'y 8, 1906. Dan F. Elliotte, Clerk.

Comes this day the Complainant, the New York Cotton Exchange, and joins issue upon the plea to the jurisdiction of the Court, filed in this cause by the defendant on the 6th day of February, 1906.

HENRY CRAFT,
Sol. for Complainant.

32 In the Circuit Court of the United States, Western District of Tennessee.

No. 601. Equity.

NEW YORK COTTON EXCHANGE
vs.
CLARENCE P. HUNT.

Agreement of Counsel.

Filed March 5, 1906. Dan F. Elliotte, Clerk.

In the case of New York Cotton Exchange against C. P. Hunt, now pending in the Federal Court, at Memphis, it is agreed by attorneys representing the defendant that the complainant may offer and use as evidence at the trial of the issue made upon the plea in abatement, the original copies of the contract made by the said Exchange with the Western Union Telegraph Company of date July 14, 1903, and the Postal Telegraph Company of date July 15, 1903, now in possession of Henry Craft, attorney for the Exchange, and that same may be considered by the Court as being identified as the originals of said contracts without further evidence. And it is further agreed that the compilation of the Charter, by-laws and rules of the New York Exchange, which is the 16th. edition thereof, published June 1904, may be used on such trial as evidence, and the Charter of the New York Cotton Exchange as therein contained may be accepted and used by the Court as the legally identified and established charter of said Exchange.

It is also agreed that the parties to the two contracts mentioned above, are still operating under the same.

It is also agreed by the counsel for the complainants in the above case, that the defendant in said case may introduce and offer in evidence the original record in the case of C. P. Hunt, *et al., v.* the Western Union Telegraph Company, No. 12613, R. D. Chancery Court of Shelby County, Tennessee, including the opinion of the Supreme Court of Tennessee, instead of producing and offering in evidence a copy of same properly certified—the intention being that the record in said case, as shown by said original papers, orders and decrees may be offered in evidence just as a certified copy of same could be.

33 It is further agreed that the complainant will furnish on or before the hearing of the pleas in abatement, a true copy of the contract between it and the Gold & Stock Telegraph Company, dated the 18th. of February 1903, which is mentioned and referred to in the first, sixth and closing paragraphs of the above mentioned contract of July 14, 1903. All proper exceptions for irrelevancy and incompetency are reserved to each side.

CARROLL, McKELLAR & BULLINGTON AND TURLEY & TURLEY, *For Hunt.*

34 UNITED STATES OF AMERICA,
Western Division of the Western District of Tennessee:

In the Circuit Court of the United States within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit thereof.

Proceedings had in said Court at a regular Term thereof, begun and held for its November Term, A. D. 1906, at the United States Court House in the City of Memphis, in said District, on to-wit: the 5th. day of March, A. D. 1906, in the following cause to-wit:

No. 601.

NEW YORK COTTON EXCHANGE
vs.
CLARENCE P. HUNT.

This cause coming on for hearing upon the plea to the jurisdiction, the replication thereto and the oral evidence (taken in open Court by leave and direction of the Court) and documentary evidence presented at the hearing and the Court also having heard the arguments of respective counsel and being fully advised in the premises, finds that the amount involved and matters in dispute in this suit, exclusive of interest and costs, exceeds the sum of two thousand dollars.

It is therefore Ordered and decreed that the plea to the jurisdiction be, and the same is hereby overruled at the costs of the defendant to be taxed by the Clerk of this Court, and that the defendant plead, demur or answer the bill herein within two (2) days from the date of this Order. It is further Ordered that the testi-

money taken *taken* down in Court and the documents used as evidence before the Court on the hearing of the above motion be filed and treated as the record of the evidence used before the —.

Upon the question of granting the preliminary injunction prayed by the complainant the Court reserves its action until after the hearing of this cause upon Bill & Answer, which hearing has been fixed for nine o'clock on Monday morning March 12th, 1906.

Enter this:

JNO. E. McCALL.

35 In the Circuit Court of the United States at Memphis.

No. 601. Equity.

NEW YORK COTTON EXCHANGE
vs.
CLARENCE P. HUNT.

The Separate Answer of Clarence P. Hunt.

Filed March 5th, 1906. Dan F. Elliotte Clerk.

This defendant admits that the plaintiff is a private corporation organized under the Statutes of the State of New York, and for certainty and particularity as to its charter and charter rights, requires the production of such charter and of the Statutes of the State of New York, under which the charter has been granted and is-ued. To the charter and the Statutes the defendant refers for answer to those portions of the bill which have reference to the plaintiff's corporate existence and its powers and authorities.

The defendant denies that the plaintiff has, or ever had any charter granted by the State of Tennessee, or any corporate existence in the State of Tennessee, and states and shows, that it has not complied with the Statutes of the state of Tennessee having reference to corporations chartered in other states and in foreign countries by filing a copy or an abstract of any charter granted it in the office of the Secretary of State, of the State of Tennessee, or in the office of any Register of any County in the State of Tennessee. This defendant therefore, denies that the plaintiff has any property in any quotations delivered in the State of Tennessee, or any property of any description in the State of Tennessee, or can maintain this suit or any suit with reference to any property locally in the State of Tennessee or any right or interest depending on its having a legal existence in the State of Tennessee, or the capacity to own property or have rights or exercise powers within the state;— The defendant pleads and relies on the disability of the plaintiff to exist in the State of Tennessee, or to own property, or to have rights there as a bar to this suit.

36 And the defendant further shows in reference to the defence just above set up, that he (the defendant),—never had any transaction of any kind either direct or indirect with the

plaintiff in the State of New York, in reference to the quotations involved in this litigation. As already appears from the record, the plaintiff constituted the Western Union Telegraph Company its agent in Tennessee, to sell said information and quotations, and this defendant entered into a regular contract with said Western Union Telegraph Company, by which it acquired the right to use said quotations and information in his business, and defendant is now maintaining his rights under said contract, through the writ of injunction referred to in the bill issued in his behalf, by the Chancery Court of Shelby County, Tennessee, and the defendant is constantly and regularly paying the Western Union Telegraph Company the consideration agreed on and fixed under said contract.

The defendant thus shows that the plaintiff is attempting to do business, and to assert property rights in Tennessee in direct and flagrant violation of the statutes of this state.

This defendant also admits that the plaintiff has not by its charter power or authority to conduct a telegraph business anywhere and more specially, that it has no power to conduct a telegraph business in the state of Tennessee. And he states and shows further that it has no power or capacity to manage, control, or direct the operation of any telegraph in the state of Tennessee, or to have or to own or have the benefit of the working or operation of any telegraph in the state of Tennessee, or the products or results of the working or operation of any such telegraphs. Nor has it powers to regulate or impose restrictions upon the duties prescribed by law in the sta-e of Tennessee for telegraph companies, or, persons operating telegraph,—or to make or prescribe contracts for them.

This defendant knows nothing about the number of members the plaintiff has, nor its expenses, nor about its building in the City of New York, nor about its income, nor about the value of its property, and as to all these matters he denies the allegations
37 of the bill and calls for proof, if they are deemed material.

Neither does this defendant know anything about the facilities the plaintiff has provided for the transaction of business in the City of New York, nor about its methods of transacting business there. As to all these matters, the defendant here enters a denial and calls for proof of the statements of the bill, if material.

This defendant does not know anything about the value of the knowledge of the prices made in the plaintiff's exchange in the transactions had there, nor about the willingness of telegraph companies to pay sums of money for the privilege of receiving quotations of such prices, and distributing the same, except as stated in the bill. All the allegations of the bill as to these matters the defendant here denies and calls for proof, if they are deemed material.

This defendant admits that the quotations of prices made in the plaintiff's exchange if property, or of any value at all outside the plaintiff's exchange in New York, must necessarily be transmitted and distributed by Telegraph Companies to places and persons outside of New York, instantaneously upon their being made in

the plaintiff's exchange. They become valueless in the plaintiff's exchange as soon as made. And they become wholly valueless, outside the plaintiff's exchange, if their transmission is delayed for a few moments after being made in the plaintiff's exchange.

This defendant denies therefore, that the plaintiff has any property in any quotations of prices, it sells and delivers to any telegraph company to be transmitted after the same are delivered, and more especially after they have arrived at the point of destination and are delivered in places outside the state of New York to the persons there for whom they are intended. The plaintiff has not capacity or power to own any such quotations upon their arrival in the State of Tennessee, or after their delivery here.

The defendant does not personally know the manner of collecting and distributing the quotations employed by the plaintiff, except as informed by the bill, and he therefore, denies the
38 statements of the bill as to those matters, and calls for full and strict proof.

It is true, as this defendant is informed, and believes, and states that for a long time prior to July 14th, 1903, the plaintiff under an arrangement with the Western Union Telegraph Company, allowed that company to gather quotations of prices, and to distribute and sell the same to its customers at its pleasure.

Defendant knows that said Telegraph Company sold quotations to him as set forth above, and that it also sold quotations to other persons in the City of Memphis, engaged in like business. But he does not know, and can not tell to whom else said Telegraph Company sold or distributed its quotations; nor for what purpose except as informed by the bill, and he therefore demands strict proof of these allegations of the bill, in so far as they may be deemed material.

Defendant is informed and believes and states that there was a contract, in writing, entered into between the Gold & Stock Telegraph Company, which is the same as the Western Union Telegraph Co., of date February, 18th, 1903, with reference to the gathering and transmission and distribution of quotations of prices in the plaintiff's exchange in New York City, and that such contract is in the possessio- of the plaintiff, and from it the fact will appear, and this defendan- prays that the plaintiff may be required to produce the said contract for the purpose of this suit.

This defendant also states from information and belief, that the quotat-ons made in the plaintiff's cotton exchange in New York City are purchased on the floor of the exchange for the purpose of being used, and are used in conducting what the bill terms, the business of gambling or betting upon the fluctuations in the price of cotton to the same extent or to a greater extent than such business is conducted by persons elsewhere purchasing such quotations from the Western Union Telegraph Company, or the Gold & Stock Telegraph Compan-. From information and belief the defendant states and avers that such gambling business so conducted, as he is informed and believes, is the principal part of the business carried on in the plaintiff's cotton exchange in New York City.

39 This defendant denies that the sale or distribution of the quotations made in plaintiff's Cotton Exchange in New York very materially affected the volume of any legitimate transactions upon the plaintiff's cotton exchange or ever discredited the plaintiff or its members in the minds of the people on the supposition that persons conducting a gambling or betting business upon the fluctuations in the prices of cotton, were in some way connected with the plaintiff, or that any persons believed that in dealing with persons conducting the business of gambling or betting upon such fluctuations, they were dealing with the plaintiff or with its members.

Defendant denies that the plaintiff's reputation or good name was in any way affected or injured by any such conduct. He denies that the plaintiff was deprived by any such conduct of any such customers, or of any sums of money in emoluments or commissions, which would otherwise have come to it. All the allegations and statements of the bill to the contrary are denied.

This defendant admits the making of the contract of July 14, 1903 between the plaintiff and the Western Union Telegraph Company, or the Gold & Stock Telegraph Company, (which is the same) set out in the bill, and he asks that the said contract may be produced for the purpose of this suit.

He denies that the rights he possessed when the said contract was entered into, as the same will be hereinafter stated, were, or could be affected by any such contract, and he claims and insists as to him, and his right, the said contract was wholly without effect or force.

This defendant claims and states and shows that the said contract so far as it undertakes to continue and preserve the property and rights of the plaintiff in the quotations of prices transmitted from its cotton exchange after they have been delivered to the Gold & Stock Telegraph Co., or the Western Union Telegraph Co., and have reach the state of Tennessee, or after they have been sold to the Gold & Stock Telegraph Co., or the Western Union Telegraph Co., with the right to sell and distribute the same to its customers, and to

40 be paid therefor by them, is wholly illegal and void.

It is also illegal and void in attempting and undertaking to create and preserve a monopoly in the plaintiff as to the sale and use to be made of the quotations after they have reached the State of Tennessee and in undertaking to confine the sale and distribution of such quotations to such persons as the plaintiff arbitrarily elect shall be allowed to purchase, or receive the same, and to exclude without reason and on no sufficient ground all persons objectionable to the plaintiff willing to pay therefor and desiring to obtain such quotations,—from purchasing or acquiring or using the same.

The said contract is illegal and void because it provides that the Telegraph Company shall not furnish quotations to any person whomsoever until such person shall have submitted an application in writing to the plaintiff in a form prescribed by it, nor until the plaintiff had approved the application, and further provides that the plaintiff shall have the right arbitrarily to notify the Telegraph Company that any person receiving quotations from the Telegraph Company is not acceptable to the plaintiff, and that thereupon the Tele-

graph Company shall at once remove the "tickers" and wires in the office or place of business of such person, placed there by the Telegraph Company, and thus deprive him of the quotations.—

The plaintiff since its organization under its original charter granted by the state of New York on April 8th, 1871, and more particularly since the amendment of such charter by the General Assembly of that state on May 8th, 1880, had continuously authorized and permitted the gathering upon its floor and the distribution therefrom of quotations of prices of cotton in transactions within its exchange for publication, and for the use of the public and for transmission by telegraph of such quotations from its exchange instantaneously to all the cities and towns of the United States, and the distribution and sale by Telegraph Companies of such quotations so transmitted to all persons at the place of receipt, desiring to purchase the same, and such custom and method of business had become established and settled and the public and the commercial community of the United Sta-es had accepted the benefit and pur-
41 chaseed and appropriated such quotations, and for many years had continuously acted upon them throughout the United States in transactions involving the sale and purchase of cotton, and thereby prior to the 14th, July, 1903, such quotations had become quasi public property and had become and were impressed and charged for the benefit and interest of the public, for such public purposes and with such public uses, and on that day the plaintiff had no power or authority, as it undertook to do by the contract copied in the bill of that date, to withdraw or withhold the said quotations from the public generally upon the terms, upon which the same had been previously received and enjoyed, and which were equal to all desiring and willing to purchase and pay for such quotations and thereby to confine the transmission and delivery of such quo*at*tions to persons arbitrarily selected by itself, and to exclude all others from the privilege of purchasing or using the same, as it undertook to do by the said contract, and for that reason the contract of the 14th, *fo* July, 1903, set-out in the bill, was and is illegal and void.

And this defendant further claims and insists and states and shows that under and by the contract of July 14th, 1903, set out in the bill, the Plaintiff has no right or authority to maintain its suit against this defendant on the grounds or for the causes set out in the bill, but it's remedy, if it has any at all therefor, is against the Gold & Stock Telegraph Co., or the Western Union Telegraph Company, the other party to the said contract, and this suit, for that reason, should be dismissed.

This defendant admits that shortly af-er the execution of the contract of the 14th, July, 1903, set out in the bill, the plaintiff furnished the Gold & Stock Telegraph Co., and the Western Union Telegraph Co., a form of an application in writing, to be made by ev-ry person desiring the quo*at*tions of the prices of cotton from the floor of the plaintiff's cotton exchange, and that such form is substantially set out in this bill, and that the plaintiff required ev-ry person, as a p*er*requisite to purchasing or procuring such quotations from the

Gold & Stock Telegraph Company, or the Western Union Telegraph Company, to sign such application and present it or have it
42 presented to the plaintiff for its action thereon.

This defendant claims and insists and states and shows that the matters contained in such form of application were unreasonable and oppressive and were contrived and intended to create and perpetuate in the plaintiff a monopoly in the said quotations, and to stifle and destroy purchase and *sla*es of cotton in the manner and upon the basis adopted and practiced in the cotton exchange of the plaintiff in New York City, in all the other Cities and towns and markets outside the City of New York, except and unless the persons engaged in or conducting the same would subordinate themselves to the plaintiff and subscribe to and be governed by its rules and regulations and contribute to its support and enable it to make profits out of their transactions.

For all the said reasons, and also for the reasons stated above, making void and illegal the contract of the 14th, July, 1903, set out in the bill, this defendant says and states and shows that the plaintiff had no right to prescribe the said form of application, and no right to require the making of any such application, and no right to refuse or to require the Gold & Stock Telegraph Co.., o*b* the Western Union Telegraph Co., to refuse the persons applying and willing to pay therefor the quotations aforesaid, because such persons refused to make such application. Whether or not, since shortly after the making of the contract of the 14th, July 1903, set out in the bill, ev-ry person receiving the quotations of prices from the plaintiff's cotton exchange through telegraph, except those persons before then receiving from the Western Union Telegraph Co., who have procured injunctions against that Company preventing it withholding or with-drawing the quotations from them have executed and delivered applications similar in form to the form stated in the bill—this defendant does *does* not know and cannot admit. He, therefore, denies the statement and calls for strict proof.—

It is true that this defendant has not made any application to the plaintiff, or to the Western Union Telegraph Company, or the Gold & Stock Telegraph Company, similar to the form copied in the bill, but he has always been desirous, and even anxious to purchase
43 and pay for and to have the use and benefit of the said quotations. And he has been and is now willing to comply with and conform to any and all reasonable rules and regulations by whomsoever prescribed, in order to obtain such quotations.—But the rules and regulations the plaintiff has attempted to impose, as stated in the bill, for the reasons stated in this answer, are not reasonable, but are unjust, oppressive and illegal.

This defendant commenced business in Memphis, as broker, dealing in cotton, stocks, grain and provisions about the month of March, 1899 and he made application to the Western Union Telegraph Co., under its designation of the Gold & Stock Telegraph Company for its cotton quotations by "ticker", and such application was accepted by the said company upon the agreement of this defendant to pay therefor to it $25.00 per month for the said service.

The contract entered into was in writing, and a true copy thereof is filed with and as a part of this answer and marked Exhibit "A". The original is held subject to the order of the Court for the purposes of this suit.

This defendant has continued business as broker, receiving the quotations contracted for under the said contract from its date until the present time. He has in all particulars complied with the condition of the said contract, and the said contract has always remained in force, and he has paid the Western Union Telegraph Company, or the Gold & Stock Telegraph Company the sum of $35.00 for each month's service as contracted for in the said contract. He has built up and has now a considerable business, had great expense and labor, and by the investment of considerable sums of money and the value and profits of his business depend largely upon the receipt and use of the said quotations by and through the said "ticker", under and in accordance with the said contract. To revoke or cancel the said contract and deny this defendant the benefit thereof, and the use of the cotton quotations by and through the ticker, as agreed therein, would in effect, destroy his business as a business of profit and value, and would produce and cause him irreparable injury and damage.

44 This information or quotations received by or through the "ticker automatically—a specimen of which is made a part of this answer and marked Exhibit "B".

These letters and figures are at once put upon a black-board in the office of this defendant for reference and use, and are used immediately in his office for the transaction of his business. The letters and figures upon the said Exhibit indicate New York as the place from which the quotations are sent, the time of the sending, the month the cotton has been sold for.

The number of cents per pound the cotton sold for is not stated but is assumed to be known, both in New York and at the point of receipt of the quotations, and only the hundredths of a cent constituting part of the price are put down in figures—thus:

N. Y. means—New York; 1139, means the hour and minute of sending;

M. H., means March cotton; 67, means eleven and sixty-seven hundredths of a cent per pound.

This defendant has transacted no business, except that of broker, as stated above, for which he has been and is duly licensed under the laws of the State of Tennessee. Ev-ry transaction made by him has been evidenced by a report made by him to his customer, upon a form—a copy of which is filed herewith, as a part of this answ-r and marked Exhibit "C." Such report evidences the consummation of the contract.

In ev-ry instance such contract, as appears by Exhibit "C." Such report evidences the consum-ation of the contract.

In every instance such contract, as appears by Exhibit "C," has had upon it, as appears upon said exhibit, the following:

"All orders for the purchase or sale of any article, are received and executed with the distinct understanding that *actual delivery*

is contemplated where order is executed, and that the party giving the order so understands and agrees."

At some time shortly after July 14th, 1903, this defendant was informed that the plaintiff had required and proposed to compel the Gold & Stock Telegraph Company, or the Western Union
45 Telegraph Company to revoke and cancel the contract between it and this defendant, Exhibit "A" to this answer, and to take the ticker out of the office of the defendant and to withdraw and cease furnishing him the quotations contracted for in the said contract. Such action would practically have destroyed the profitable part of the business of this defendant.

There-upon this defendant and other persons similarly engaged in the business of broker, On July 31st, 1903 filed in the Chancery Court of Shelby County, Tennessee, their bill against the Western Union Telegraph Company, the only corporation or person, other than these defendants, within the jurisdiction of the State of Tennessee, a party to or connected with the contract aforesaid, Exhibit "A" hereto, or representing the Gold & Stock Telegraph Company the other *apr*ty to such contract.

The said suit stands as #12613 in the Chancery Court of Shelby County, and to the record and proceedings in the same this defendant here refers as a part of this his answer. In the bill the facts on which the plaintiffs in the said suit, including this defendant, based their rights, as stated in this answer, were substantially set out, as more fully appears by the bill now here referred to for particularity and certainty. The prayer of the bill was that the plaintiffs in that suit, which included this defendant, severally have a writ of injunction restraining the Western Union Telegraph Company—the defendant to the said suit, from removing from the places of business of the plaintiffs in the said suit respectively, just so long as they respect*fully* paid the price therefor—the "tickers" then in their respective places of business and commanding and requiring the said Western Union Telegraph Company, the defendant to afford this defendant and the other plaintiff in the said suit respectively, through the means of the ticker, aforesaid, so in their places of business respectively, quotations, just as long as the said Western Union Telegraph Company, the defendant furnished such quotations by such means to any other persons in the City of Memphis, engaged in the same business with this defendant and the other plaintiff, whilst they complied with its reasonable regulations and paid for such
46 service. Upon the presentation of the said bill to the Chancellor of the said Chancery Court of Selby County, an order was made requiring the Clerk & Master of the said Court, upon the executing of the bond prescribed, to issue an order in the language of the prayer of the bill, restraining and prohibiting the defendant, the Western Union Telegraph Company, as prayed therein, until the further order of the Court. Leave was granted the defendant in the said suit upon a day's notice, to move to discharge the said stop order, but until the further action of the Court, it was declared that the order should be retained. It was dated July 31st, 1903. The bond required was executed and fioed and approved. The lan-

guage of the writ of injunction issued by the Clerk & Master of the said Chancery Court under the said order of the Chancellor was that the defendant, the Western Union Telegraph Company, desist and refrain from removing from the place of business the plaintiffs in the said suit respectively, just so long as they paid the premium therefor, the "ticker" then in their respective offices, and that the said Western Union Telegraph Company afford said plaintiffs in the said suit respectively, through means of such "ticker" quotations, just as long as they furnished such quotations by such means to other persons in Memphis engaged in the same business with said plaintiffs respectively whilst they complied with the reasonable regulations and paid for such service.

On April 28th, 1904, the Western Union Telegraph Company, the defendant in said suit, filed its answer therein. It made the contract between the plaintiff in this suit and the Gold & Stock Telegraph Company, of the 14th, July 1903,, copied in the bill herein, an exhibit to such answer, and based its defense to the said suit, so in the Chancery Co-rt of Shelby County, substantially upon such contract. This defendant, upon the authority of such contract of July 14th, 1903, and from information and belief, state- and aver- that the said answer was so filed by the Western Union Telegraph Company, at the request and by the direction and for the benefit of the plaintiff in this suit—the New York Cotton Exchange and also the Gold & Stock Telegraph Co., and with the view and for the purpsoe
47 of asserting and setting up for him, and in his belief, the very same matters and grounds and causes of action as are set up and relied upon in this s-it.

After the said answer had been fioed the said cause came on to be heard in the Chancery Court of Shelby County on August 12th, 1904. It was then decreed that the stop order aforesaid, or injunction be discharged, and that the bill of the plaintiff in the said suit be dismissed at their costs. The plaintiffs in the said suit, including this defendant, prayed an appeal from that decree to the Supreme Court to sit at Jackson on the first Monday of April, 1905, and such appeal was granted and perfected, and the said cause taken thereby to the said Supreme Court:

The same was heard in the Supreme Court on the 15th June 1905. That Court decreed that the decree of the Chancery Co*i*rt of Shelby County, dissolving the injunction and dismissing the bill of the plaintiffs in the said suit, including this defendant, in the then condition of the record, as appears from a written memorandum made by the Chief Justice of the Supreme Court for the Court, which memorandum was made a part of the decree of the Supreme Court, and also of the *procendendo* issued from that Court to the Chancery Co*i*rt, was erroneuous and was reversed, vacated and set aside, and that the said suit be remanded to the Chancery Co*i*rt for further proceedings, which the decree declared should consist of the taking of proof, if desired and the final hearing of the said cause on its merits in the said Chancery Court.

The saisd Supreme Court further decreed that pending and until

the final hearing of the said suit upon the merits, the injunction and stop order as granted by the Chancery Court as before stated, be retained and continued in force.

— the memorandum, or opinion made by the Chief Justice, and forming a part of the decree of the Supreme Court, it was stated among other things: "The answer presented as a defense to the claim of complainants' contracts with the various exchanges of the country, which if *am*de, raised a serious question for the consideration of the Court. We think that in the absence of such contracts it can not be maintained that the defendant Company could remove
the tickers of these complainants as long as they complied
48 with the reasonable regulations of the defendant and declined
to furnish them with further quotations which were indispensable to the successful conduct of their business, and at the same time supply these instruments, and through them this valuable information to competitors in business in the same community. That the Telegraph Co., is a quasi public corporation bound to serve the public without discrimination and have reasonable charges, is established by all the authorities, and especially in this state in the case of Marr *vs.* The Western Union Telegraph Co., 85 Tenn., 356. This being so, we think its only answer to the claim of the complainants lies in the contracts which it avers. Upon this averment, two questions arise. One of fact—the other of law.

The first is—have such contracts been made, and if so, what is their import? This can only be answered by competent evidence. This is not furnished by the specimen copy of one of these contracts made an exhibit to this answer. We think that in the absence of competent evidence as to the making and stipulation of these contracts the Court should not rule upon them.

The next question, is one of law. Conceding their existence and their nature as averred—do they furnish a sufficient answer to the demand of the complainants? As to this question, the Courts are divided. In the present condition of the record, it is impossible for this Court to decide the question."

And the Court said further in the same memorandum—"In view of this difference of judicial opinion, we think it will be improper in the face of a record imperfect as this is, to intimate an opinion on this question. It will be time enough to do this when it is presented upon a record bringing up in perfect condition one or all these contracts. As to the dissolution of the injunction, we think as the injunction was the very life of this bill, having been granted, it should not have been dissolved until the cause was finally heard."

After the decree of the Supreme Court, the *procedendo* from that
Court was sent down to the Chancery Court of Shelby County,
49 and filed therein and the Decree of the Supreme Court, including the said *precedendo,* was made a part of a decree of the Chancery Court and the said suit is now pending in the said Chancery Court awaiting the taking of testimony as directed by the Supreme Court and in the mean time the injunction granted as before stated, remains in full force and effect.

This defendant has remained in the use and enjoyment of the

ticker, placed in his place of business, as aforesaid, by the Western Union Telegraph Company, under and by virtue of the contract of about May 1st, 1899, and the injunction so granted and issued by the Chancery Court of Shelby County and the Supreme Court of Tennessee, as they still are, and in that way and by that means he has been and is receiving and the Western Union Telegraph Co., has been and is furnishing him the continuous quotations described in the bill, and in this answer.

This defendant states and shows that the said suit, so pending in the Chancery Court of Shelby County, embraces and comprehends the same subject-matter as this present suit, that it is between the same parties, plaintiffs and defendants as this present suit; that the same questions of fact and law are involved and to be decided as in this suit, and that the decree to be pronounced will adjudicate and dispose of the same matters of controversy that are sought to be adjudicated and disposed of in this suit.

This defendant, therefore, pleads and relies upon the pendency of the said suit in the Chancery Court of Shelby County, Tennessee in bar of the further prosecution of this suit, and prays that he may have the benefit of this plea as a matter of defense by way of answer.

This defendant further claims and insists and states and shows that this Court has not the jurisdiction to grant or issue the injunction herein prayed for, because of the injunction aforesaid granted, and in force in the said suit, pending in the Chancery Court of Shelby County, Tennessee, as the injunction herein prayed for would require and compel the violation and breach of the injunction granted and in force in the Chancery Court of Shelby County, and the undoing of what has been done and is to be done in the course of the said suit.

50 This defendant states and shows further, that at no time has he wrongfully or illegally obtained or acquired or had the use of the quotations claimed by the plaintiff to belong to it, as appears by its bill, nor has he done or permitted to belong to it, as appears by its bill, nor has he done or permitted anything contrary to the provisions and meaning of the contract, entered into between him and the Western Union Telegraph Company of about May 1st, 1899.

For a further defense, this defendant states and shows that the Western Union Telegraph Co., and the Gold Stock Telegraph Co., with the consent and by the permission and under the authority of the plaintiff in this suit, has been since the 14th, July 1903, and still is selling, delivering and furnishing to a number of brokers in the City of Memphis, doing substantially the same business as this defendant, the continuous quotations aforesaid of the plaintiff, sent from its Cotton Exchange in New York City, in the manner before stated, without limit or restraint or condition, and by means of "ticker" in his respective place of business upon terms substantially the same as those set out in the contract between this defendant and the Gold & Stock Telegraph Company of ——.

And this defendant submits and states and shows that the plaintiff cannot lawfully withhold and refuse such quotations to this

defendant upon the same terms upon whch he has been and is being received by the said other brokers. And he submits further that the with-holding and refusal of the plaintiff of such quotations to this defendant is wrongful and in violation of law. All the allegations and statements of the bill to the contrary, are now here denied.

Further answering, this defendant says, and states and shows, that upon the facts alleged in the bill, the remedy of the plaintiff against him for the alleged causes of action, set out in the bill, is complete and adequate at law, and that this Court has no jurisdiction on the grounds set out in the bill, or any other grounds to maintain this suit.

51 And for further defense this defendant states and shows that many years prior to 1903, in order to obtain revenue from its quotations and information, the complainant inaugurated the arrangement, with the said Telegraph Companies, by which said Telegraph Companies were to pay it for said quotations and information and dispense and sell the same throughout the country. And Defendant shows further that this was done for the express purpose of building up the kind of business in which defendant is engaged. The complainant and the Telegraph Companies say and understand, that if this kind of business could be built up, the persons engaged therein would need the quotations and information, which the said complainant and the Telegraph Companies could, under said agreement, furnish them. It was a part of said arrangement that all persons who might engage in said line of business should be assured they could at all times receive said quotations and information for a reasonable compensation. The plan thus inaugurated proved successful. This defendant, and any other people throughout the country, on the faith and assurance that said arrangement would be faithfully and continuously carried out by the complainant and said Telegraph Companies, entered into said business and have now large sums of money invested therein. And this defendant now avers upon these facts, that the complainant is estopped from arbitrarily denying him the use in his said business of said quotations and information.

CLARENCE P. HUNT.

Subscribed and sworn to before me, this the 5th, day of March, 1906.

[SEAL.] DAN F. ELLIOTTE, *Clerk.*

52 In the Circuit Court of the United States for the Western Division of the Western District of Tennessee.

Supplemental Agreement.

Filed March 12, 1906. Dan F. Elliotte, Clerk, by C. Harlan Elliotte.

In relation to the contract for continuous quotations of the New Orleans Cotton Exchange, dated the 23rd, day of October, 1903, it is understood and agreed that the Telegraph Company shall have the right to furnish its present subscribers with the continuous quota-

tions of the New Orleans Cotton Exchange until the thirtieth day of November, 1903, in order to give time for the filing of applications therefor and approval thereof by said Exchange, unless applications filed by any of said subscribers are disapproved by the Cotton Exchange prior to the thirtieth day (30) day of November, 1903.

—— ——, *President.*

H. G. HESTER, *Secretary.*

New York, Octo. 23, 1903.

53 *Continuous Quotations.*

This agreement made and entered into this twenty third (23rd) day of October, 1903, by and between the Gold and Stock Telegraph Company, hereinafter designated as the Telegraph Company, party of the first part, and the New Orleans Cotton Exchange hereinafter designated as the Exchange, party of the second part;

Whereas the Telegraph Company has made application to the Exchange for the privilege of receiving, for distribution to its customers, the continuous quotations of prices made in all trades and transactions in cotton which shall originate upon the floor of the Exchange, and

Whereas the Exchange is willing to grant said privilege to said Telegraph Company upon the terms hereinafter set forth:—

Now this indenture witnesseth:

That in consideration of the premises, and of the *convents* and agreements herein contained, the parties hereto mutually agree as follows.—

First:—The Exchange agrees to collect, furnish and transmit to the Telegraph Company in the manner hereinafter provided, for distribution by the Telegraph Company, as hereinafter provided, full and continuous quotations of the current transactions in cotton which originate and are consum-ated upon the floor of the Exchange during the hours for trading prescribed by its rules, and also the changes which may occur in the same from time to time. Said quotations shall embrace such as have heretofore been usually supplied by the Exchange to the Telegraph Company, or which the Telegraph Company under the contract between itself and the Exchange, dated the 10th day of December, 1897, has collected, compiled and reported at its own expense for the purpose of distribution to its customers; and while the Exchange does not guarantee that the same shall be absolute accurate, or shall embrace all the transactions occurring or originating on its Exchange, it will nevertheless use reasonable diligence to make the same as full, complete and accurate as may be practicable.

54 The Exchange shall furnish booths and instruments on the floor of its Exchange, and wires connecting said instruments with the Telegraph Company's wires, at such point or points in the building belonging to the Exchange, as may be determined by the Exchange; and the Telegraph Company shall be permitted to connect its wires to its Commercial News Department, and its main office, and directly with its offices in other cities as it may deem proper;

and the Exchange shall by its own operators transmit said reports hereinbefore provided for from said booths on the floor of its Exchange, directly and promptly over its wires, and the Telegraph Company shall receive the same over its wires by its own operators, the intent of this being to not change the manner or method of transmission of the service from the floor of the Exchange heretofore employed by the Telegraph Company for such transmission. The wires of the Telegraph Company connecting with those of the Exchange may be connected with any other wires by repeater or other device, and the reports shall be taken from them by operators of the Telegraph Company at its offices, and may be re-transmitted by the Telegraph Company's operators over other wires to its customers.

The Telegraph Company further agrees, that the wires over which said reports are transmitted to its main office, Commercial News Department, and other offices, shall be so arranged and protected as to render the same, as far as possible, incapable of being tapped, and that the Telegraph Company shall use its utmost endeavors to prevent the said reports, or any part thereof, being taken off said wires, or in any way diverted or distributed, prior to their being taken off at said main office and Commercial News Department or other offices as hereinbefore provided.

The Telegraph Company agrees to pay the cost of collecting said continuous quotations on the floor of said Exchange, and the cost of transmitting them from the floor of said Exchange over the Exchange's wires connected with the Telegraph Company's wires as aforesaid, it being expressly understood and agreed that said cost of collecting and transmitting said continuous quotations shall not exceed the cost of both services heretofore paid by the Telegraph
55 Company—it being the intent thereof that the Telegraph Company's expenses for the collection and transmission of said continuous quotations on and from the floor of said Exchange shall not be increased by reason of the Exchange performing said collection and transmission service by its own employes instead of its being performed by the Telegraph Company's employés, unless the Telegraph Company shall at any time find it necessary to increase said force of collectors and operators which if done will be at the Telegraph Company's expense.

Second:—The Telegraph Company shall have the right to serve said quotations to members of the Exchange at their offices or branch offices, and shall charge such members of the Exchange for the use of tickers delivering such quotations in their offices in New Orleans, not exceeding Twenty five Dollars ($25.00) per month for each ticker.

The Telegraph Company shall have the right to serve said continuous quotations to all persons, firms, corporations and organizations in New Orleans, and elsewhere wherever the Telegraph Company may desire to serve them including any other telegraph company owned, leased or controlled by it or with which it now has or may hereafter have any operating contract or other arrangement for exchange business, but not to persons, firms or corporations who or which may be directly or indirectly engage- in the promotion or

maintenance of bucket shops or other places where such continuous quotations are used as a basis for bets or other illegal contracts based upon the fluctuations of the prices of cotton dealt in on said Exchange, together with the right to collect its tolls and charges therefor, it being understoood that all tolls and charges so collected shall belong to and be retained by the Telegraphe Company.

Nothing herein contained shall be construed as imposing upon the Telegraph Company the duty to investigate and determine the character of the business conducted by any person, firm or corporation applying for or receiving said continuous quotations, but the Telegraph Company shall not under any circumstances directly or indirectly, furnish said continuous quotations to any persons, firm, corporation or organization whether members of the Exchange or
56 not, until such person, firm, corporation or organization shall have submitted an application in writing to the said Exchange in such form as the said Exchange shall provide, and until said Exchange has approved of said application. And in the event the Exchange shall become satisfied, that any person, firm or corporation, who or which has been approved by it, is no longer acceptable to it, then it shall so notify the Telegraph Company which shall at once cease to furnish said continuous quotations to said person, firm or corporation, and in the event that the Telegraph Company has installed tickers or wires in the office or place of business of such person, firm or corporation for the purpose of furnishing said continuous quotations, it shall at once remove said ticker or wires, upon receipt of notice from the Exchange to that effect.

Applications submitted to the Exchange either directly or through the Telegraph Company shall be acted upon promptly by the Exchange, which shall notify the Telegraph Company of their approval or disapproval, within thirty days after the receipt of each application. If the Exchange shall not, within said time notify the Telegraph Company at its office in New Orleans of the disapproval of any application, then said application may be accepted by the Telegraph Company which may thereupon transmit said quotations to said applicant.

Whenever the Telegraph Company shall obtain and deliver to the Exchange an application for said quotation service from any person, firm corporation who at the time of *am*king said application is receiving said quotations with the approval of the Exchange, then the Telegraph Company may furnish said quotations on said application without waiting for an approval by the Exchange as hereinbefore *rp*ovided in other cases.

The Telegraph Company however shall not be required to remove any of its tickers or wires or to discontinue service furnished by any other means, which are under restraint by injunction of the Courts, during the pendency of such injunction.

In case where an application has been approved by the Exchange and the Telegraph Company has been serving the quotations
57 under the provisions of this contract, and the Exchange shall give notice to the Telegraph Company to discontinue said service as provided herein, and legal proceedings shall thereupon be

commenced against the Telegraph Company or the Exchange, on account of such discontinuance, said proceedings shall be defended by said Exchange, which shall and hereby does agree to pay all counsel and attorneys fees, costs, charges, damages, fines, expenses and penalties to which the said Telegraph Company may be put by such discontinuance or refusal to serve said quotations.

In cases brought against the Telegraph Company the Exchange may defend by its own counsel at its own expense in the name of the Telegraph Company.

In cases where an application has not been approved by the Exchange, and legal proceedings shall be thereupon commenced against the Telegraph Company on account of its refusal to furnish said quotations the Telegraph Company shall at its own cost and expense defend such litigation and shall use diligent efforts to secure the removal of any injunction obtained in said causes, in cases in which the Exchange may so desire or request.

In case- where an application has not been approved by the Exchang- and legal proceedings shall thereupon be commenced by such applicant for said quotations against the Exchange on account of its refusal to permit the Telegraph Company to serve the said quotations, the Exchange shall, at its own expense defend against said litigations thus instituted against it.

Third:—The Exchange agrees that it will not grant the privilege of receiving and transmitting or using, nor will it furnish to any personal party, firm or corporation other than the Telegraph Company, and the Postal Telegraph Company, any quotations originating on the floor of the Exchange, nor will the Exchange so far as it can lawfully prevent the same, permit, suffer or allow any of its members to transmit, distribute or deliver for sale, any of the said quotations originating on said Exchange, nor will said Exchange do any act, whereby any other person, firm or cor-
58 poration other than the Telegraph Company, party hereto, and the above mentioned Postal Telegraph Company, shall acquire any right to receive, use, transmit or deliver for sale or distribution, any of the said quotations originating on the said Exchange.

The Exchange may grant to the Postal Telegraph-Cable Company the same right to receive and transmit the aforesaid quotations only as is hereby granted to the Telegraph Company and in that case the Exchange shall require said Postal Telegraph Company to execute a contract upon the same terms and conditions all and singular, and in the same manner as herein set forth, but the continuous quotations shall not be delivered by the Exchange to the Postal Company in advance of the time of delivery to the Telegraph Company party hereto and the Exchange may arrange with the Postal Company for delivering the quotations to it either by wire in the same manner as to the Telegraph Company, or in manuscript at the Postal Company's office in the Exchange, or in any other manner desired by the Postal Company which shall not give it any advantage over the Telegraph Company as to time in receiving said quotations from the Exchange.

For the purpose of protecting the Telegraph Company against the use of any quotations originating on said Exchange by parties not entitled to them, the Telegraph Company may prosecute by suit, injunction or other legal remedies proper and suitable for the prevention or stoppage of such competitive use either in its own name or in the name of the Exchange or its proper officers, any party or parties obtaining or using said quotations, not entitled to them, whether obtained from the Exchange or its members, officers or employés or otherwise, and in case the Telegraph Company shall sue and proceed in the name of the Exchange, the Exchange shall by its proper officers do all such proper acts and things and sign all such proper and necessary papers, in order to enable the Telegraph Company to conduct said proceedings with due diligence and effect, all such suits and other legal proceedings whether carried on by the Telegraph Company in its name, or in the name of the Exchange, shall be at the sole cost and expense of the Tele-
59 graph Company; and the Telegraph Company agrees to indemnify and save harmless the Exchange of and from all damages, expenses, cost, charges and fees incurred in or arising out of any such suit, or proceeding.

Fourth:—For the purpose of this agreement, the term "Members of the Exchange" shall be construed to include any firm one or more of whose partners are members of the Exchange or any person entitled to admission to the floor of the Exchange; and the term "Continuous quotations" whereever used in this agreement, shall be construed to mean ev-ry service of quotations wherein the price of cotton shall be quoted oftener than at inte-vals of fifteen (15) minutes.

The Telegraph Company shall have the right to serve to its customers, quotations at intervals of more than fifteen minutes, without submitting application therefor to the Exchange.

Fofth:—It being the intention of this agreement that the quotations to be furnished by the Exchange to the Telegraph Company shall be substantially such as has been furnished in the past by the Exchange to the Telegraph Company or such as have been collected compiled and transmitted by the Telegraph Company itself, under the contract of December 10th, 1897, and the nature of the business rendering it impossible to insure absolute accuracy or correctness in said reports, it is especially understood, that while the Exchange will use reasonable diligence in collecting and transmitting said quotations as fully, completely and accurately as may be practicable, yet it shall not be liable to the Telegraph Company or any of its customers for any delays, inaccuracies, errors or omissions in said quotations, or for any damages arising therefrom or occasioned thereby.

Sixth:—The parties hereto agree that if at any time hereafter, and before the expiration of this contract, any dispute or difference shall arise between them concerning the true intent, meaning or construction of anything contained in this contract, or concerning any matter included within the spirit or scope thereof, or concerning the acts or omissions of the Exchange or the Telegraph Company, then and

so often as a dispute or difference shall arise, any and all such matters in difference shall be submitted and referred to the award
60 and determination or three arbitrators to be chosen one by the Exchange, another by the Telegraph Company, and the third by the two chosen, and the decision or award of any two of the arbitrators in writing, shall be binding and final between the Exchange and the Telegraph C-mpany, and shall be carried out and performed by the said Exchange or the Telegraph Company, as the case may be.

Seventh:—The Exchange hereby agrees that in passing upon applications for said continuous quotation service presented by the Telegraph Company and the Postal Company, the Exchange will act without discrimination as between them, and whenever the Exchange shall have before it at the same time applications from the same person, firm or corporation presented both through the Telegraph Company party hereto and said Postal Telegraph Company, if it approves said applications, it shall approve then both at the same time and shall notify at the same time both of said Telegraph Companies of such approval. This shall apply either when an application is approved affirmatively or by the failure of the Exchange to act upon any application.

Eight:—The provisions of this agreement shall take effect on the second (2) day of November 1903, and shall be and continue in force for and during the full term of one year from said date, and shall further continue after the expiration of said term, from year to year, unless either party shall give written notice of termination at least thirty days prior to the expiration of said Term, and after the close of said term of one year, either party may terminate this agreement at the end of any contract year after having given notice in writing of an intention so to do, at least thirty days before the close of such contract year.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

THE GOLD & STOCK TELEGRAPH COMPANY,

(Sgd.) By R. C. CLOWRY, *President.*

(Sgd.) A. R. BREWER, *Secretary.*

THE NEW ORLEANS COTTON EXCHANGE,

(Sgd.) A. RUTLIN, *President.*

(Sgd.) H. G. HESTER, *Secretary.*

61 UNITED STATES OF AMERICA,
Western Division of the Western District of Tennessee:

In the Circuit Court of the United States Within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit thereof.

Proceedings had in said Court at a regular term thereof, begun and held for its November Term, A. D. 1905, at the United States

Court House in the City of Memphis, in said District, on to-wit: the 12th day of March A. D. 1906, in the following cause to-wit:

No. 601.

NEW YORK COTTON EXCHANGE
vs.
CLARENCE P. HUNT.

This day came on to be heard this cause upon the bill and answer thereto and the same having been argued by counsel, was by the Court taken under consideration.

62 In the Circuit Court of the United States for the Western Division of the Western District of Tennessee, at Memphis.

In Equity. No. 602.

THE NEW YORK COTTON EXCHANGE
vs.
CLARENCE P. HUNT.

Evidence.

Filed March 12th, 1906. Dan F. Elliotte, Clerk.

Upon the hearing of this cause before the Court on the 5th day of March, 1906, by special order of the Court, oral testimony was offered by the respective parties, upon the issue presented by the bill and the plea in abatement thereto filed, as follows:

Defendant offered in evidence the original contract made between the Gold & Stock Telegraph Company, and the New York Cotton Exchange, of date March 18, 1884, to-wit:

63 In the Circuit Court of the United States for the Western Division of the Western District of Tennessee.

Agreement made the eighteenth day of March A. D. 1884 between the Gold and Stock Telegraph Company, party of the first part, and The New York Cotton Exchange, party of the second part, witnesseth:

First: That if the second party shall perfect arrangements at such places throughout the United States as it shall from time to time deem proper for the preparation of quotations and reports of the Cotton Market and of the weather for transmission to it at New York City, and shall bear and assume the whole expense of the collection and preparation thereof, and shall designate to the first party the regularly appointed Reporter of the second party at each of said places, and shall cause reporters and each of them to deliver said quotations and reports to the first party at such places for transmission, then and in that case the first party will transmit and deliver said quotations and reports to the second party at its Exchange in

the City of New York by Morse wire between said Exchange and the Commercial News Department of the first party at the rates and charges hereinafter provided for domestic reports, the quotation and reports at present required by the second party so as to be transmitted, being enumerated in a Schedule hereunto annexed marked "Schedule A" which is hereby made a part of this agreement, it being expressly understood and agreed that the second party may at any time during the continuance of this agreement alter at pleasure its requirements as to the reports and quotation to be transmitted and delivered hereunder both as to character and place of origin thereof, it being further agreed and understood that, if additional or new reports shall be required, and extra expense shall be necessarily incurred by the first party in the collection or transmission thereof, it being further agreed and understood that, if additional or new reports shall be required, and extra expense shall be necessarily incurred by the first party in the collection or transmission thereof, the charges and rates therefor shall be increased in proportion to such extra expense. And the first party further covenants and agrees that it will at its own expense, and without cost or expense to the second party (other than the charges and rates hereinafter specified) furnish the necessary skilled operators for receiving, handling and transmitting the matter hereinbefore provided for both at its own Commercial News Department, and at the Exchange of the second party, and that it will transmit and deliver the aforesaid quotations and reports to the second party at its Exchange as promptly as may be practicable, subject only to such unavoidable delays as are incidental to telegraphic transmission, and that it will transmit and deliver to the second party, in pursuance of this agreement, the aforesaid quotations and reports with as much accuracy and correctness as can be obtained by the employment of careful and experienced operators, but the first party is not to be held pecuniarily responsible for the accuracy of the same, nor for errors, delays or ommissions in the transmission or delivery thereof, but said first party will, at the request of the second party repeat back to the place of origin any quotations or reports from places within the United States that the second party may wish repeated back for the purpose of assuring the correctness of the same. And in consideration of the foregoing agreements by the first party, the second party hereby covenants and agrees that it will during the continuance of this agreement pay the following rates on the matter delivered to it at its Exchange in the City of New York, viz:

64

For unrepeated matter from places within the United States, five (5) cents per word.

For repeated matter from places within the United States, seven and one-half (7½) cents per word.

Bills are to be rendered and settlements effected monthly during the continuance of this agreement.

Second: And the second party for and in consideration of the sum of two hundred and eight and 33-100 dollars ($208.33) per month, which the first party hereby agrees to pay to the second party at the close of each month during the con-

65

tinuance of this agreement, hereby covenants and agrees that the first party shall have and enjoy the right to collect compile and report for the purpose of sale and distribution, (such sale and distribution to be made in such manner as the first party may deem proper and for its own use and benefit), all quotations, trades and transactions in cotton for future delivery, and reports and statistics thereof, which shall originate on the floor of said Exchange, it being understood that all charges and tolls collected by the first party for the sale and distribution of said quotations and reports shall belong to and be retained by it and that said monthly payment to the second party as hereinbefore provided shall be in full of all claims or demands of whatever nature for the use of all said quotations, trades and transactions in cotton for future delivery which shall originate on the floor of said Exchange. The rights hereby granted to the first party shall be subject however, to the following reservations, limitations and conditions, viz:

1. That the second party may continue, during the term of this agreement to print, copyright, publish, sell and distribute its daily and weekly circulars containing the aforesaid quotations, trades and transactions.

2. That the second party reserves to itself the right to correspond by telegraph or otherwise with other Cotton Exchange- or Associations using in such correspondence as well the aforesaid quotations, trades and transactions as any other news, information or statistics which shall have come into the possession of the second party from any source whatsoever under the provisions of this agreement.

3. That the members of the second party may use the aforesaid quotations trades and transactions for the transactions of their private business and for communication to their private business correspondents by mail, telegraph or otherwise, but they shall not be used, or in any way distributed by said members for any other purpose whatsoever.

66 4. That the representatives of newspapers printed and published in the City of New York shall be permitted to gather for publication in their respective newspapers, but not for sale, nor for transmission to any person, corporation or association the aforesaid quotations, trades and transactions originating on the floor of said Exchange.

And the second party further agrees that it will prohibit and forbid the aforesaid representatives of newspapers from using the aforesaid quotations, trades and transactions for any other purpose than for publication in their respective newspapers, and will exclude from the floor of its Exchange any representative of a newspaper who shall make use of said quotations, trades and transactions except as hereinbefore provided for.

5. That the second party may sell to any other Telegraph or Telephone Company or association the same right to collect, compile and report for sale and distribution, the aforesaid quotations, trades and transactions in cotton for future delivery originating on the floor of said Exchange only as is hereby sold to the first party, but shall not so sell the same nor allow the aforesaid quotations, trades

and transactions to be used by any other Telegraph or Telephone Company or association during the continuance of this agreement, unless such other Telegraphs or Telephone Company or association shall pay to the second party the sum of two hundred and eight and 33–100 dollars ($208.33) in cash per month.

And the second party further agrees that it will forbid and prohibit all persons, firms, Telegraph or Telephone Companies or other corporations or associations, except as aforesaid, and except the first party, from gathering on the floor of said Exchange, or copying from the Blackboards thereof, any news or information relating to quotations, trades or transactions in cotton for future delivery originating on the floor of said Exchange for the purpose of selling, publishing or distributing the same or for transmitting them to any other place except as hereinbefore expressly reserved and provided, and that it will exclude from the floor of said Exchange any person, firm, Telegraph or Telephone Company or other corporation or association who shall, except as hereinbefore expressly re-
67 served and provided sell, publish or distribute any news or information relating to quotations, trades or transactions in cotton for future delivery originating on the floor of said Exchange whether the same shall be obtained by such unauthorized part or parties from the second party's floor or Blackboards, or from the first party's indicators or otherwise.

And the first party agrees that it will at all times during the continuance of this agreement employ and provide a sufficient number of competent and experienced reporters and operators on the floor of said Exchange for the purpose of collecting, reporting and forwarding accurate reports of all trades, deals and transactions in cotton for future delivery made on the floor of said Exchange, and the second party agrees to extend to said first party and its reporters all reasonable facilities and aid within its power for the collection, compilation and forwarding of the aforesaid quotations, trades and transactions and for obtaining accurate and reliable information relating thereto. It being expressly understood that all the reporters and operators employed by the first party on the floor of said Exchange are to observe and to be amenable to all rules and regulations prescribed by the second party, or the officers or committees thereof for the preservation of order on the floor of the Exchange, the second party reserving the right to exclude from its floors any of said reporters or operators whose conduct shall in the opinion of the officers of said Exchange be such as to warrant such exclusion.

And the second party agrees that the first party may place and keep in such part or parts of said Exchange as the Second party shall designate and set apart for the purpose, such printing instruments as may be necessary for the use of the first party and its reporters, it being understood that the matter reported thereon is to be so reported solely for the first party, and not for the second party or its members, and it being further understood that such printing instruments are not to occupy any more space than the second party or its officers shall deem it convenient to set apart there-
68 for.

It is further expressly understood and agreed that the

second party shall not be held liable pecuniarily for any failure or omission on its part to prevent the sale or distribution of the aforesaid quotations, trades, transactions and reports of cotton for future delivery by unauthorized persons, firms, corporations or associations.

This agreement shall go into effect on the 22nd, day of March, A. D. 1884, and shall continue until the expiration of thirty (30) days after either party shall have given to the other, written notice of the intention to cancel the same.

In Witness Whereof, the parties hereto have caused these presents to be executed by their respective proper officers, and have caused their corporate seals to be hereunto affixed the day and year first above written.

THE GOLD AND STOCK TELEGRAPH COMPANY,
By JNO. VAN HORNE, *Vice President.*

A. R. BREWER, *Secretary.*

THE NEW YORK COTTON EXCHANGE,
By M. B. FIELDING, *President.*

G. E. MOORE, *Secretary.*

69 *Schedule "A."*

Schedule "A" Commenced Sept. 10, 1883.

Ports.

Daily, 2. Weekly, 0.	Est'd rec'ts.	Receipts. Net.	Receipts. Gross.	Exports. G. B.	Exports. France.	Exports. Cont.	Exports. Chan'l.	Exports. Coast.	Sales.	Stock.	Mark't.	Mids.	Fr'ts.
Galveston	00	00	00	00	00	00	00	00	00	00	0	0	0
New Orleans	00	00	00	00	00	00	00	00	00	00	0	0	0
Mobile	00	00	00	00	00	00	00	00	00	00	0	0	0
Savannah	00	00	00	00	00	00	00	00	00	00	0	0	0
Charleston	00	00	00	00	00	00	00	00	00	00	0	0	0
Wilmington	0	00	00	00	00	00	00	00	00	00	0	0	0
Norfolk	00	00	00	00	00	00	00	00	00	00	0	0	0
Baltimore	0	00	00	00	00	00	00	00	00	00	0	0	0
Philadelphia	0	00	00	00	00	00	00	00	0	0			
Boston	0	00	00	00	00	00	00	00	0	0			

Interiors.

Daily, 0. Weekly, 0.	Receipts. Net.	Receipts. Gross.	Ship'ts.	Sales.	Stocks.	Market.	Mids.	Freights.	Rainfall.
Atlanta	0	0	0		0	0	0	0	0
Augusta	0 0		0		0	0	0	0	0
Brenham	0		0	0	0	0 0	0 0	0	0
Charlotte	0		0		0	0	0	0	0
Chester	0		0		0	0	0	0	0
Cincinnati	0 0		0		0	0	0	0	0
Columbus, Ga	0		0		0	0	0	0	0
Columbus, Miss	0		0		0	0	0	0	0
Columbia, N. C	0		0		0	0	0	0	0
Dallas	0		0		0	0	0	0	0
Eufaula	0		0		0	0	0	0	0
Griffin	0		0		0	0	0	0	0
Helena	0		0		0	0	0	0	0
Little Rock	0		0		0	0	0	0	0
Macon	0		0		0	0	0	0	0
Memphis	0 0 0		0 0 0	0	0 0 0	0 0 0	0	0	0
Montgomery	0		0		0	0	0	0	0
Nashville	0		0		0	0	0	0	0
Newberry	0		0		0	0	0	0	0
Petersburg	0		0		0	0	0	0	0
Raleigh	0		0		0	0	0	0	0
Rome	0		0		0	0	0	0	0
Selma	0		0		0	0	0	0	0
Shreveport	0		0		0	0	0	0	0
St. Louis	0 0 0		0 0 0	0	0 0 0	0 0 0	0	0	0
Vicksburg	0		0		0	0	0	0	0
Palestine	0		0		0	0	0	0	0

Weekly, 0.	Net.	Gross.	Export.	Stock.
West Point	0	0	0	0
City Point	0	0	0	0
Richmond	0	0	0	0
Indianola	0	0	0	0
Pensacola	0	0	0	0
Brunswick	0	0	0	0
Port Royal	0	0	0	0
Providence	0	0	0	0

No financial or foreign cotton reports & New Orleans future quotations.

70 It is mutually agreed between the Gold Stock & Telegraph Company and the New York Cotton Exchange, parties to the foregoing contract dated the Eighteenth day of March, 1884, that from and after the First day of July, 1885, the rates provided for in the first Section thereof, shall be as follows:

For unrepeated matter from places within the United States four (4) cents per word.

For repeated matter from places within the United States six (6) cents per word.

In all other respects said contract shall be and continue in full force and effect, as therein provided.

Witness our hands and seals this 23rd, day of June 1885.

THE GOLD & STOCK TELEGRAPH COMPANY,
By JNO. VAN HORNE, *Vice-President.*

A. R. BREWER, *Secretary.*

THE NEW YORK COTTON EXCHANGE,
By SIEGER GRUNER, *President.*

WILLIAM V. KING, *Secretary.*

Also the original contract between the Gold & Stock Telegraph Company and the New York Cotton Exchange, of date February 18, 1903:

71 *Outgoing Continuous Quotations.*

This agreement made this Eighteenth (18) day of February, 1903, by and between the Gold & Stock Telegraph Company, a Corporation of the State of New York, party of the first part, and The New York Cotton Exchange, also a Corporation of the State of New York, part of the Second Part, hereinafter respectively designated for convenience as the Telegraph Company and the Exchange, witnesseth:

First:—The Exchange for and in consideration of the sum of Eight hundred and thirty three and 33/100 dollars ($833.33) per month, which the Telegraph Company agrees to pay to the Exchange in the manner hereinafter provided, during the continuance of this agreement, hereby covenants and agrees that the Telegraph Company shall have and enjoy the right to collect, compile and report for the purpose of sale and distribution, (such sale and distribution to be made in such manner as the Telegraph Company may deem proper and for its own use and benefit), complete and continuous quotations of prices made in all trades and transactions in cotton and reports and statistics thereof, which shall originate on the floor of said Exchange, it being understood that all charges and tolls collected by the Telegraph Company for the sale and distribution of said quotations and reports shall belong to and be retained by it; and that said monthly payment to the Exchange as hereinbefore provided, shall be in full of all claims or demands of whatever nature for the use of all the aforesaid quotations, trades, transactions, reports and statistics. The rights hereby granted to the Telegraph Company shall be subject however, to the following reservations, limitations and conditions, viz:

1. That the Exchange may continue, during the term of this agreement to print, copyright, publish, sell and distribute its daily and weekly circulars containing the aforesaid quotations, trades, transactions, reports and statistics.

72 2. That the Exchange may sell to the Postal Telegraph Cable Company under a contract similar in all respects to this contract, the same right to collect compile and report for sale and distribution, the aforesaid quotations of prices made in all trades and transactions in cotton and reports and statistics thereof originating on the floor of said Exchange, only as is hereby sole to the first pa-ty, upon the same terms and conditions all and singularly, and in the same manner as herein set forth, except as to the amount to be paid therefor which shall not be less than the sum of Two hundred and eight and *33/* 33/100 dollars ($208.33) in cash per month, so long as no greater use of said matter is made by said Postal Company than at present, it being understood and agreed that in case said Postal Company shall at any time actively compete with the Telegraph Company in furnishing, distributing and selling said matter, the Exchange shall require said Postal Company to pay the same price therefor as is herein agreed to be paid by the Telegraph Company. And the Exchange further agrees that it will forbid, prevent and prohibit all persons, firms, Telegraph or Telephone Companies or other Corporations or associations, except as aforesaid, and except the Telegraph Company, from gathering on the floor of said Exchange or copying from the Blackboards thereof, and from selling or distributing any of the aforesaid mattter and any news or information relating to quotations, trades or transactions in cot-on or reports and statistics thereof, originating on the floor of said Exchange, for the purpose of selling publishing or distributing the same or for transmitting the same to any other place except as hereinbefore expressly reserved and provided; and that it will exclude from the floor of said Exchange any such person, firm, Telegraph or Telephone Company or other corporation or association who shall sell, publish or distribute any of the aforesaid matter or any such news or information aforesaid whether the same shall be obtained by such unauthorized party or parties from the Exchange floor or Blackboards, or from the Telegraph Company's indicators or otherwise.

And the Telegraph Company agrees that it will at all times during the continuance of this agreement employ and provide a sufficient number of competent and experienced reporters and operators
73 on the floor of the said Exchange for the purpose of collecting, reporting and forwarding accurate reports of all trades, deals and transactions in cotton made on the floor of said Exchange, and the Exchange agrees to extend to the Telegraph Company and its reporters all reasonable facilities and aid within its power for the collection, compiliation and forwarding of the aforesaid quotations, trades and transactions and for obtaining accurate and reliable information relating thereto. It being expressly understood that all the reporters and operators employed by the Telegraph Company on the floor of said Exchange are to observe and be amenable to all rules and regulations prescribed by the Exchange, or the officers or Committees thereof for the preservation of order on the floor of said Exchange, the Exchange reserving the right to exclude from its floor any of said reporters or operators whose conduct shall in the opinion of the officers of said Exchange be such as to warrant such exclusion.

And the Exchange further agrees that the Telegraph Company may place and keep in such part or parts of said Exchange as the Exchange shall designate and set apart for the purpose, such printing instruments as may be necessary for the use of the Telegraph Company and its reporters, it being understood that the matter reported thereon is to be so reported solely for the Telegraph Company and not for the Exchange or its members, and it being further understood that such printing instruments are not to occupy any more space than the Exchange or its officers shall deem it convenient to set apart ther-for.

Second:—The Telegraph Company agrees that it will not knowingly furnish or sell, directly or indirectly, said continuous quotations to any person, firm or corporation conducting a bucket-shop, or other similar place, where such quotations are used as a basis for bets or other illegal contracts based upon the fluctuations of the prices of cotton dealt in on said Exchange; nor will the Telegraph Company knowingly continue to furnish said continuous quotations to any person, firm or corporation who shall retransmit or furnish the same to any person, firm or corporation conducting such bucket-shop or other place, provided however, that nothing in this contract
74 shall be construed as imposing upon the Telegraph Company the duty to investigate and determine the character of business conducted by any person, firm or corporation applying for or receiving such continuous quotations, but the procedure to be adopted for the purpose of determining whether any applicant for such continuous quotations, or any person, firm or corporation receiving said quotations, contemplates using them, or is using them, for any of the prohibited purposes aforesaid, shall be as follows:

1. Ev-ry applicant for such continuous quotations shall sign in duplicate an application in writing as follows:

To the Gold & Stock Telegraph Company:

We hereby apply to you for the continuous market quotations of the New York Cotton Exchange, and we represent and agree with you, and with the New York Cotton Exchange, from which you under contract have acquired the right to distribute said quotations,

1. That our business is and shall be the business of —— and that we are not keeping or causing to be kept and will not keep or cause to be kept, any bucket-shop, or any office, store, or other place wherein is conducted or permitted the business of making, or offering to make, contracts, agreements, trades or transactions, respecting the purchase or sale, or the purchase or sale, of any cotton, wherein both parties hereto, or the undersigned, contemplate or intend that such contracts, agreements, trades or transactions shall be, or may be, closed, adjusted or settled according, or with reference to, the public market quotations of prices made on any Exchange upon which the cotton referred to in said contracts, agreements, trades or transactions is dealt in, and without a *bona fide* transaction on such Exchange, or wherein both parties, or the undersigned, shall contemplate or intend that such contracts, agreements, trades or transactions shall be, or may be, deemed closed or terminated when the public market quotations of prices made on such

Exchange for the cotton named in said contracts, agreements,
75 trades or transactions a certain figure; and we agree that we will not use, or allow any one else to use, such quotations, or any of them, for any such purpose or in any such bucket-shop.

2. We further agree with you, and with the said New York Cotton Exchange, that said quotations are to be received by us only for our private and individual use, and that said quotations will be used only in our said business; and that we will not sell or communicate or otherwise give said continuous quotations to any news distributing company, or telegraph company, or other person or corporation, nor allow any person or corporation whatsoever, to take, directly or indirectly, said continuous quotations from said office, or to make a wire connection with the instruments or wires in said office over which we receive said quotations. But nothing herein shall preclude us from transmitting said quotations to any branch office of ours, nor to any of our correspondents, provided that before transmitting said continuous quotations to any such correspondent, we first obtain in duplicate (one of which shall be at once delivered to said New York Cotton Exchange through said Telegraph Company) an agreement signed by such correspondent, in which said correspondent shall agree with you, and with said Cotton Exchange to abide by and comply with clauses 1, 2, and 3, hereof. If the undersigned shall transmit, or permit to be transmitted, said quotations to any person, firm or corporation, who shall not have first signed a correspondent's agreement as above provided, the undersigned hereby agrees that said New York Cotton Exchange may sue the person, firm or corporation to whom said quotations are thus transmitted, to prevent the receipt or use of said quotations by said person, firm or corporation, without making the undersigned a defendant thereto, Provided the undersigned does not, or in case of a partnership, all the members thereof do not, reside within the jurisdiction of the Court in which said suit is brought. By "continuous quotations" in this Clause 2 is meant quotations wherein the price of cotton shall be quoted oftener than at intervals of ten minutes.

76 3. We further agree that a strict compliance with the above provisions is and shall be a condition precedent to our right to a continuance of said quotations, and agree if we shall violate either of the above provisions, then you shall have the right at once, and without notice, to cutt off and cease furnishing said quotations.

We further agree with you that you shall not be pecuniarily liable for the accuracy of the quotations which you may furnish under this application, nor for errors, delays or omission in the service.

This application shall become a contract binding upon us when accepted by you.

One of such applications so signed shall be by the Telegraph Company at once transmitted to the Exchange at New York, which shall thereupon instigate such investigation as it deems proper to determine whether such applicant desires said quotations for said prohibited purposes. Such investigation shall, in the case of applications made and delivered to the Exchange within thirty days

after the date hereof, be completed within sixty days after the date hereof; and when so received after said thirty days, said investigation shall be completed within twenty (20) after such receipt of said application. If the Exchange shall not within the time above specified notify the Telegraph Company at its office in New York that, for the reasons aforesaid, said application shall not be granted, then said application shall be accepted and the Telegraph Company may thereupon furnish said applicant said quotations; but if within said time the Exchange shall find upon investigation, and shall notify the Telegraph Company that said applicant wishes said quotations for any of said prohibited purposes, the Telegraph Com--any shall refuse to furnish said quotations upon said application. If legal proceedings shall thereupon or thereafter be commenced against the Telegraph Company on account of any delay in receiving said quotations or such refusal to furnish quotations, said proceedings shall be defended by the Exchange which shall, and hereby agrees to, pay all counsel and attorney's fees, costs, charges, damages, fines, penalties and expenses which the Telegraph Company may be put to or may be made subject to on account
77 of such delay or refusal; and for the purpose of securing the Telegraph Company against any such loss, expenses or damages occasioned by such delay or refusal or such legal proceedings, the Telegraph Company shall at all times retain from the compensation hereinbefore provided, the amount of such compensation for the period of six months; and to this end, the first payment provided for under this contract shall not be made until seven months after it shall go into effect, and if at any time the Telegraph Company shall be obliged to pay any costs, damages or expenses which shall not be refunded to it by the Exchange on demand, then the Telegraph Company may pay from the said fund so retained the amount so paid by the Telegraph Company, and may then retain from the subsequently accruing installments a sum sufficient to make good the amount so paid out from said fund for costs, damages or expenses.

2. If the Exchange shall at any time ascertain that any persons, firm or corporation receiving said continuous quotations from the Telegraph Company, or from persons to whom it furnishes said quotations is using said quotations for the purpose of conducting the business of illegal gambling in the Cotton dealt in on said Exchange, or is conducting a bucket-shop as defined by the laws of New York, or is violating any of the agreements, contained in said application or cor-espondent's agreement, then the Exchange may,

(1) So inform the Telegraph Company and tender to the Telegraph Company its bond, with a surety company in good financial standing as surety thereon running to the Telegraph Company, and in such reasonable penal sum as shall be mutually agreed upon by the practice hereto, conditioned to save the Telegraph Company harmless from all costs and damages (including Attorney's fees) that may be incurred by the Telegraph Company by acting upon said information and thereon with-holding said quotations from such person, firm or corporation. And thereupon the Telegraph Company shall at once cease to furnish said quotations to such per-

son, firm or corporation, or if a correspondent, then to the person, firm or corporation whose correspondent he is; and in that event the Exchange shall at its own expense, defend any suits
78 brought against the Telegraph Company by reason of its said conduct. Or if the Exchange shall elect not to give such bond of indemnity then it (2) may at its own expense commence legal proceedings in a court of competent jurisdiction against such person, firm or corporation and the Telegraph Company to enforce this contract and determine whether such person, firm or corporation is using said quotations for such illegal purposes, or is using such quotations in conducting a bucket shop or contrary to the terms of his, its or their agreement aforesaid; and in such suit the Telegraph Company shall enter its general appearance as defendant, and if in said suit or in any suit brought by any such person, firm or corporation against th- Telegraph Company, it shall be determined by injunctional order or final judgment or decree conclusive upon the parties to said suit, against the right of such person, firm or corporation to have or use said quotations, then said quotation service to such person, firm or corporation shall be discontinued by the Telegraph Company, and the Exchange shall indemnify and save the Telegraph Company harmless against any loss, damage, or expense which may result to it by reason of said discontinuance of said service.

Third: It is further agreed by the Exchange that it will cause to be kept quotation records showing the fluctuations throughout the day with the specific time of said fluctuations in the same manner as said quotation records have been heretofore kept, and that the Telegraph Company may at all times have access to said quotations records.

Fourth: Thirty days after the termination of this contract the amount of money withheld by the Telegraph Company as *as* a security fund aforesaid shall be paid by it to the Exchange, provided, that if there are then pending any suits or claims against the Telegraph Company on account of its refusal to furnish or continue furnishing said quotations, then the Telegraph Company shall have the right to retain a sufficient amount of said fund to amply secure it against said suits and claims, and on the final adjudication or settlement of said suits and claims the amount withheld as security therefor shall be paid by the Telegraph Company to the Exchange.
79 But if the Exchange shall give to the Telegraph Company good and sufficient bond ample to protect it against said pending suits and *and* claims, including all costs, damages and expenses, signed by some surety company in good standing and satisfactory to the Telegraph Company, then the Telegraph Company shall pay the balance of said fund to the Exchange.

Fifth: The Exchange agrees to use all reasonable efforts to protect its property right in said quotations against purloiners thereof, and the Telegraph Company agrees that it will join either with the Exchange or other telegraph company having the right to distribute said quotations, or both, as plaintiffs in any suit now pending or hereafter commenced, to protect said property right in said quotations from purloiners, provided that the Telegraph Company shall

be saved harmless by the Exchange from any expense, costs, attorney's fees and damages incurred in or by reason of any such suit.

Sixth: The Telegraph Company agrees that it will, whenever requested by the Exchange, furnish to it a list of the persons who have discontinued said continuous quotations, to the end that the Exchange may at all times know the names, locations and street addresses of all persons, firms or corporations then receiving said continuous quotations.

Seventh: It is further agreed that the Telegraph Company may furnish said quotations to any other telegraph company with which it now has or may hereafter have, any operating contract or other arrangement, provided that every such telegraph company shall first sign a contract or agreement, running to the Exchange, to abide by and conform to clauses two, fifth, sixth and nine of this agreement.

Eighth: And the Exchange hereby agrees that it has not entered into and will not enter into any contract or arrangement with any other person or company who has or may acquire the right to
80 distribute said quotations, in which contract or arrangement the Exchange has agreed or shall agree to pass upon applications of persons applying for the quotation service in a shorter period than those above provided for in the second clause of this contract. And it is further agreed that in passing upon applications for said quotation service presented by the Telegraph Company and any other Company authorized to furnish such service, the Exchange will act without discrimination as between them, or as between either of them, and any other person or corporation sending in applications for its patrons. And whenever the Exchange shall have before it at the same time applications from the same person, firm or corporation presented through the Telegraph Company party hereto and said Postal Company, if it approves any of said applications, it shall approve them all at the same time and shall notify at the same time both of said Telegraph Companies of such approval. This shall apply either when an application is approved affirmatively or by the failure of the Exchange to act upon any application.

Whenever the Telegraph Company shall obtain and deliver to the Exchange an application for the quotation service from any person, firm or corporation who at the time of making said application is receiving said quotation with the approval of the Exchange, then the Telegraph Company may furnish said quotations on said application without waiting for an approval by the Exchange as herein before provided in other cases.

Ninth: The words "continuous quotations" wherever used in this agreement, shall be construed to mean every service of quotations wherein the price of cotton shall be quoted oftener than at intervals of ten minutes.

The Telegraph Company agrees not to furnish said continuous quotations to any person, firm or corporation except as provided in sections two and seven hereof, the only intent and purpose hereof being to prevent the misuse of said quotations for said unlaw-
81 ful purposes, or in said unlawful business, and not to discriminate between persons desiring them for other than said prohibited purposes.

Tenth: This agreement shall take effect on the Second (2nd) day of March 1903 and shall continue in force for and during the term of one (1) year from said date, and shall continue after the close of said term until the expiration of thirty (30) days after written notice shall have been given, after the close of said term, by either party to the other of an intention to terminate the same.

In witness whereof the parties hereto have hereunto affixed their signatures and corporate seals, the day and year first above written.

THE GOLD AND STOCK TELEGRAPH COMPANY,

By —— ——, *President.*

—— ——, *Secretary.*

THE NEW YORK COTTON EXCHANGE,

By —— ——, *President.*

—— ——, *Secretary.*

Also the original contract between the Gold & Stock Telegraph Company and the New York Cotton Exchange, of date July 14, 1903:

82 In the Circuit Court of the United States for the Western Division of the Western District of Tennessee.

Agreement Between the Gold & Stock Telegraph Company and The New York Cotton Exchange.

This agreement made and entered into this fourteenth (14th) day of July 1903, by and between the Gold & Stock Telegraph Company, hereinafter designated as the Telegraph Company, party of the first *aprt*, and the New York Cotton Exchange, hereinafter designated as the Exchange, party of the second part.

Whereas the Telegraph Company has made application to the Exchange for the privilege of receiving, for distribution to its customers, complete quotation of prices made in all trades and transactions in cotton which shall originate upon the floor of the Exchange, and

Whereas the Exchange is willing to grant said privilege to said Telegraph Company upon the terms hereinafter set forth:—

Now this indenture witnesseth:

That in consideration *in* the premises, and of the covenants and agreements herein contained, the parties hereto mutually agree as follows:

First: The Exchange agrees at its own cost and expense to collect, furnish and transmit to the Telegraph Company in the manner hereinafter provided, for distribution by the Telegraph Company, as hereinafter provided, full and continuous quotations of the current transactions in cotton, which originate and are consum-ated upon the floor of the Exchange during the hours for trading prescribed by its rules, and also the change which may occur in the same from time to time. Said quotations shall embrace such as have

heretofore been usually supplied by the Exchange to the Telegraph Company, or which the Telegraph Company under the contract between itself and the Exchange, dated the 18th day of February 1903, has collected, compiled and reported at its own expense
83 for the purpose of distribution to its customers; and while the Exchange does not guarantee that the same shall be absolute- accurate, or shall embrace all the transactions occurring or originating on its Exchange it will nevertheless use reasonable diligence to make the same as full, complete and accurate as may be practicable.

The Exchange shall furnish booths and instruments on the floor of its exchange, and wires connecting said instruments with the Telegraph Company's wires, at such point or points in the building belonging to the Exchange, as may be determined by the Exchange; and the Telegraph Company shall be permitted to connect its wires from said building to its Commercial News Department, and its main office, or directly with its offices in other Cities as it may deem proper; and the Exchange shall by its own operators transmit said reports hereinbefore provided for from said booths on the floor of its Exchange, directly and promptly over its wires, and the Telegraph Company shall receive the same over its wires by its own operators, the intent of this being to not change the manner or method of transmission of the service from the floor of the Exchange heretofore employed by the Telegraph Company for such transmission. The wires of the Telegraph Company connecting with those of the Exchange may be connected with any other wires by repeater or other device, and the reports shall be taken from them by operators of the Telegraph Company at its offices, and may be retransmitted by the Telegraph Company's operators over other wires to its customers.

The Telegraph Company further agrees, that the wires over which said reports are transmitted to its main office, Commercial News Department, and other offices, shall be so arranged and protected as to render the same, as far as possible, incapable of being tapped, and that the Telegraph Company shall use its utmost endeavors to prevent the said reports, or any part thereof, being taken off said wires, or in any way diverted or distributed, prior to their being taken off at said main office and Commercial News Department or other offices as hereinbefore provided.

84 And the Exchange further agrees that the Telegraph Company may place and keep in such part or parts of said Exchange as the Exchange shall designate and set apart for the purpose, such printing instruments as may be necessary for the use of the Telegraph Company, it being understood that the matters reported thereon *is* to be so reported solely for the Telegraph Company and not for the Exchange or its members, and it being further understood that such printing instruments are not to occupy any more space than the Exchange or its officers shall deem it convenient to set apart therefor.

Second: The Telegraph Company shall have the right to serve said quotations to members of the Exchange at their offices or branch offices, and shall charge such members of the Exchange for the use

of tickers delivering such quotations in their offices in New York City, not exceeding twenty dollars per month for each ticker.

The Telegraph Company shall have the right to serve said continuous quotations to all persons, firms, corporations and organizations in New York City and elsewhere wherever the Telegraph Company may desire to serve them including any other Telegraph Company owned, leased or controlled by it or with which it now has or may hereafter have any operating contract or other arrangement for exchange of business, but not to persons, firms or corporations who, or which may be directly or indirectly engaged in the promotion or maintenance of bucket shops or other places where such continuous quotations are used as a basis for bets or other illegal contracts based upon fluctuations of the prices of cotton dealt in on said Exchange, together with the right to collect its tolls and charges therefor, it being understood that all tolls and charges so collected shall belong to and be retained by the Telegraph Company.

Nothin- herein contained shall be construed as imposing upon the Telegraph Company the duty to investigate and determine the character of the business conducted by any person, firm, or corporation applying for or receiving said continuous quotations, but the Telegraph Company shall not under any circumstances directly or indirectly, furnish said continuous quotations to any person, firm, corporation or organization whether members of the Exchange or not, until such person, firm, corporation or organization shall have submitted an application in writing to the said Exchange in such form as the said Exchange shall provide, and until said Exchange has approved of said application. And in the event the Exchange shall become satisfied, that any person, firm or corporation, who or which has been approved by i- is no longer acceptable to it, then it shall so notify the Telegraph Company which shall at once cease to furnish said continuous quotations to said person, firm or corporation, and in the event that the Telegraph Company has installed tickers or wires in the office or place of business of such person, firm or corporation for the purpose of furnishing said continuous quotations, it shall at once remove said tickers or wires, upon receipt of notice from the Exchange to that effect.

Applications submitted to the Exchange either directly or through the Telegraph Company shall be acted upon promptly by the Exchange, which shall notify the Telegraph Company of their approval or disapproval within thirty days after the receipt of each application. If the Exchange shall not, within said time notify the Telegraph Company at its office in New York City of the disapproval of any application, then said application may be accepted by the Telegraph Company which may thereupon transmit said quotations to said applicant.

Whenever the Telegraph Company shall obtain and deliver to the Exchange an application for said quotations service from any person, firm or corporation who at the time of making said application is receiving said quotations with the approval of the Exchange, then the Telegraph Company may furnish said quotations on said appli-

cation without waiting for an approval by the Exchange as hereinbefore provided in other cases.

The Telegraph Company however shall not be required to remove any of its tickers or wires or to discontinue service furnished by any other means, which are under restraint by injunction of the Courts, during the pendency of such injunction.

86 In cases where an application has been approved by the Exchange, and the Telegraph Company has been serving the quotations under the provisions of this contract, and the Exchange shall give notice to the Telegraph Company to discontinue said service as provided herein, and legal proceedings shall thereupon be commenced against the Telegraph Company or the Exchange, on account of such discontinuance, said proceedings shall be defended by said Exchange, which shall and hereby does agree to pay all counsel and attorneys' fees, costs, charges, fines, expenses and penalties to which the said Telegraph Company may be put by such discontinuance or refusal to serve said quotations.

In cases brought against the Telegraph Company the Exchange may defend by its own counsel at its own expense in the name of the Telegraph Company.

In cases where an application has not been approved by the Exchange, and legal proceedings shall be thereupon commenced against the Telegraph Company on account of its refusal to furnish said quotations, the Telegraph Company shall at its own cost and expense defend such litigation and shall use diligent efforts to secure the removal of any injunctions obtained in said causes, in cases in which the Exchange may so desire or request.

In cases where an application has not been approved by the Exchange and legal proceedings shall thereupon be commenced by such applicant for said quotations against the Exchange on account of its refusal to permit the Telegraph Company to serve the said quotations, the Exchange shall, at its own cost and expense defend against said litigation thus instituted against it.

Third: The Exchange agrees that it will not grant the privilege of receiving and transmitting or using, nor will it furnish to any person, party, firm or corporation other than the Telegraph Company, and the Postal Telegraph Company, any quotations originating on the floor of the Exchange, nor will the Exchange so far as it can lawfully prevent the same, permit, suffer or allow any of its members to transmit, distribute or deliver for sale, any of the said quotations originating on said Exchange, nor will said Exchange do any act, whereby any other person, firm or corporation

87 other than the Telegraph Company, party hereto, and the above mentioned Postal Telegraph Company, shall acquire any right to receive, use, transmit or deliver for sale or distribution, any of the said quotations originating on the said Exchange.

The Exchange may grant to the Postal Telegraph-Cable Company the same right to receive and transmit the aforesaid quotations only as is hereby granted to the Telegraph Company and in that case the Exchange shall require said Postal Company to execute a contract upon the same terms and conditions all and singular, and in the same manner as herein set forth, except as to the amount to be paid

thereunder which shall be not less than the sum of Thirty three hundred and ninety six dollars ($3396.00) per annum in cash, so long as no greater use of said matter is made by said postal Company than at present, it being understood and agreed that in case said Postal Company shall at any tme actively compete with the Telegraph Company in distributing and selling said matter, the Exchange shall require said Postal Company to pay the same price therefor as is herein agreed to be paid by the Telegraph Company.

The quotations shall be delivered by the Exchange to the Telegraph Company and to the Postal Company at the same time, and the Exchange may arrange with the Postal Company for delivering the quotations to it either by wire in the same manner as to the Telegraph Company, or in manuscript at the Postal Company's office in the Exchange, or in any other manner desired by the Postal Company which shall not give it any advantage over the Telegraph Company as to time in receiving said quotations from the Exchange.

For the purpose of protecting the Telegraph Company against the use of any quotations originating on said Exchange by parties not entitled to them, the Telegraph Company may prosecute by suit, injunction or other legal remedies proper and suitable for the prevention or stoppage of such compet-tive use either in its own name or in the name of the Exchange or its proper officers, any party or parties obtaining or using said quotations, not entitled to
88 them, whether obtained from the Exchange or its members, officers or employés or otherwise, and in case the Telegraph Company shall sue and proceed in the name of the Exchange, the Exchange shall by its proper officers do all such proper acts and things and sign all such proper and necessary papers, in order to enable the Telegraph Company to conduct said proceedings with due diligence and effect. All such suits and other legal proceedings whether carried on by the Telegraph Company in its own name, or in the name of the Exchange, shall be at the sole cost and expense of the Telegraph Company; and the Telegraph Company agrees to indemnify and save harmless the Exchange of and from all damages, expenses, cost, charges and fees incurred in or arising out of any suit, or proceeding.

Fourth: As compensation for the privilege of receiving and serving said quotations, hereby granted by the Exchange to the Telegraph Company, the Telegraph Company agrees to pay to the Exchange the sum of Thirteen thousand five hundred and eighty four dollars ($13,584.00) per annum in equal installments of Eleven hundred and thirty two dollars ($1132.00) at the close of each month, during the continuance of this agreement, and in case the Telegraph Company shall make default in the payment of any such installment for the period of fifteen days after the same becomes due the Exchange may forthwith terminate such privilege without notice.

Fifth: For the purpose of this agreement, the term "member of the Exchange" shall be construed to include any firm one or more of whose partners are members of the Exchange, and the term "continuous quotations" wherever used in this agreement, shall be construed to mean ev-ry service of quotations wherein the price of cot-

ton shall be quoted oftener than at intervals of Fifteen (15) minutes.

The Telegraph Company shall have the right to serve to its customers, quotations at intervals of more than fifteen minutes, without submitting applications therefor to the Exchange.

Sixth: It being the intention of this agreement that the quotations to be furnished by the Exchange to the Telegraph Company shall be substantially such as have been furnished in the past by the Exchange to the Telegraph Company or such as have been col-
89 lected, compiled and transmitted by the Telegraph Company itself, under the contract of February 18th, 1903, and the nature of the business rendering it impossible to insure absolute accuracy or completeness in said reports, it is especially understood, that while the Exchange will use reasonable diligence in collecting and transmitting said quotations as fully, completely and accurately as may be practicable, yet it shall not be liable to the Telegraph Company or to any of its customers for any delays, inaccuracies, errors or omission in said quotations, or for any damages arising therefrom or occasioned thereby.

Seventh: The parties hereto agree that if at any time hereafter and before the expiration of this contract, any dispute or difference shall arise between them concerning the true intent, meaning or construction of anything contained in this contract, or concerning any matter included within the spirit or scope thereof, or concerning the acts or omission of the Exchange or the Telegraph Company, then and so often as a dispute or difference shall arise, any and all such matters in difference shall be submitted and referred to the award and determination of three arbitrators to be chosen one by the Exchange, another by the Telegraph Company, and the third by the two chosen, and the decision or award of any two of the arbitrators, in writing, shall be binding and final between the Exchange and the Telegraph Company, and shall be carried out and performed by the said Exchange or the Telegraph Company, as the case may be.

Eight-: The Exchange hereby agrees that in passing upon applications for said continuous quotation service presented by the Telegraph Company and the Postal Company, the Exchange will act without discrimination as between them, and when ever the Exchange shall have before it at the same time applications from the same person, firm or corporation presented both through the Telegraph Company party hereto and said Postal Company, if it appeoves said applications it shall approve them both at the same time and shall notify at the same time both of said Telegraph Companies of such approval. This shall apply either when an application is approved affirmatively or by the failure of the Exchange to act upon any application.

90 Ninth: The provision of this agreement shall take effect on the first (1) day of August, 1903, and shall be and continue in force for and during the full term of one year from said date, and shall further continue after the expiration of said term, from year to year, unless either party shall give written notice of termination at least thirty days prior to the expiration of said term; and after the close of said term of one year, either party may ter-

minate this agreement at the end of any contract year after having given notice in writing of an intention so to do, at least thirty days before the close of such contract year.

This agreement between the Gold & Stock Telegraph Company and the New York Cotton Exchange dated the Eighteenth (18th) day of February 1903, for outgoing continuous quotations, is hereby cancelled.

In Witness Whereof the parties hereto have hereunto set their hands and seals, the day and year first above written.

THE GOLD & STOCK TELEGRAPH COMPANY,
By R. C. CLOWRY, *President.*

[CORPORATE SEAL.]

A. R. BREWER, *Secretary.*

THE NEW YORK COTTON EXCHANGE,
By R. P. McDOUGALL, *President.*

[CORPORATE SEAL.]

HENRY H. WHEELER, *Secretary.*

Also the original contract between the Postal Telegrah & Cable Company and the New York Cotton Exchange, of date July 15,, 1903:

91 In the Circuit Court of the United States for the Western Division of the Western District of Tennessee.

Agreement Between the Postal Telegraph Cable Company and the New York Cotton Exchange.

This Agreement made and entered into this 15th day of July, nineteen hundred and three, by and between the Postal Telegraph Cable Company, hereafter designated as the Telegraph Company, party of the first part, aand the New York Cotton Exchange, hereafter designated as the Exchange, party of the second part:—

Whereas, the Telegraph Company has made application to the Exchange for the privilege of receiving for distribution to its customers complete quotations of prices made in all trades and transactions in cotton which shall originate upon the floor of the Exchange:—

And, Whereas, the Exchange is willing to grant said privilege to said Telegraph Company upon the terms hereinafter set forth:—

Now this Indenture Witnesseth:—

That in consideration of the premises and of the covenants and agreements herein contained the parties hereto mutually agree as follows:—

First: The Exchange agrees at its own cost and expense to collect, furnish and transmit to the Telegraph Company in the manner hereinafter provided for distribution by the Telegraph Company as

hereinafter provided, full and continuous quotations of the current transactions in cotton which originate and are consummated upon the floor of the Exchange during the hours for trading prescribed by its rules, and also the changes which may occur in the same from time to time. Said quotations shall embrace such as have heretofore been usually supplied by the Exchange to the Telegraph Company, or which the Telegraph Company under the contract
92 between itself and the Exchange, dated November 9, 1894, and the additional agreement entered into between the said Exchange and said Telegraph Company, dated the 21st day of March, 1903, has collected, complied and reported at its own expense for the purpose of distribution to its customers: and while the Exchange does not guarantee that the same shall be absolutely accurate or shall embrace all the transactions occurring or originating on its Exchange, it will nevertheless use reasonable diligence to make the same as full, complete and accurate as may be practicable.

The Exchange shall furnish booths and instruments on the floor of its Exchange, and wires connecting said instruments with the Telegraph Company's wires at such point or points in the building belonging to the Exchange as may be determined by the Exchange; and the Telegraph Company shall be permitted to connect its wires from said building to its Commercial News Department and its main office, or directly with its offices in other cities, as it may deem proper; and the Exchange shall by its own operations transmit said reports hereinbefore provided for from said booths on the floor of the Exchange directly and promptly over its wires, and the Telegraph Company shall receive the same over its wires by its own operators or, at the option of the Telegraph Company, instead of delivering said quotations by wire as hereinbefore set forth, the Exchange shall deliver said quotations in writing to the Telegraph Company at its booth or booths upon the floor of the Exchange, and which said quotations the Telegraph Company shall receive and transmit over its wires to its customers in the same manner, for the same purpose and under the same restrictions as if said quotations were delivered by wire to the said Telegraph Company as hereinbefore provided. Said quotations whether delivered to the Telegraph Company as promptly as to any other company.

The wires of the Telegraph Company connecting with those of the Exchange may be connected with any other wires by repeater
93 or other device and the reports shall be taken from them by operators of the Telegraph Company at its offices and may be retransmitted by the Telegraph Company's operators over other wires to its customers.

The Telegraph Company further agrees that the wires over which said reports are transmitted to its main office, Commercial News Department, and other offices, shall be so arranged and protected as to render the same as far as possible incapable of being tapped, and that the Telegraph Company shall use its utmost endeavors to prevent the said reports or any part thereof being taken off the said wires or in any way diverted or distributed prior to their being taken off at said main office and Commercial News Department or other offices as hereinbefore provided.

Second: The Telegraph Company shall have the right to serve said continuous quotations to all persons, firms, corporations and organizations in New York City and elsewhere wherever the Telegraph Company may desire to serve them, including any other telegraph company owned, leased or controlled by it, or with which it now has or may hereafter have any operating contract or other arrangement for exchange of business, but not to persons, firms or corporations who or which may be directly or indirectly engaged in the promotion or maintenance of bucket shops or other places where such continous quotations are used as the basis for bets or other illegal contracts based on fluctuations of the prices of cotton dealt in on said Exchange, together with the right to collect its tolls and charges therefor, it being understood that all tolls and charges so collected shall belong to and be retained by the Telegraph Company.

Nothing herein contained shall be construed as imposing upon the Telegraph Company the duty to investigate and determine the character of the business conducted by any person, firm or corporation applying for or receiving said quotations, but the Telegraph Company shall not under any circumstances directly or indirectly furnish said quotations to any person, firm, corporation or organization, whether members of the Exchange or not, until such
94 person, firm, corporation or organization shall have submitted an application in writing to the said Exchange in such form as the said Exchange shall provide, and until said Exchange has approved of said application. And in the event the Exchange shall become satisfied that any person, firm or corporation who or which has been approved by it is no longer acceptable to it, then it shall so notify the Telegraph Company which shall at once cease to furnish said quotations to such person, firm or corporation, and in the event that the Telegraph Company has installed tickers or wires in the office or place of business of such person, firm or corporation for the purpose of furnishing said quotations it shall at once remove said tickers or wires upon receipt of notice from the Exchange to that effect.

Applications submitted to the Exchange either directly or through the Telegraph Company shall be acted upon promptly by the Exchange which shall notify the Telegraph Company of their approval or disapproval within thirty (30) days after receipt of each application. If the Exchange shall not within the said time notify the Telegraph Company at its office in New York City of the disapproval of any application, then said application may be accepted by the Telegraph Company which may thereupon transmit said quotation to said applicant.

Whenever the Telegraph Company shall obtain and deliver to the Exchange an application for said quotation service from any person, firm or corporation who at the time of making said application is receiving such quotations with the approval of the Exchange then the Telegraph Company may furnish said quotations on such applications without waiting for an approval by the Exchange as hereinbefore provided in other cases.

The Telegraph Company however shall not be required to remove

any of its tickers or wires, or discontinue service furnished by any other means which are under restraint by injunction of the courts during the pendency of such injunction of the courts *during*
95 *the pendency of such injunction,* but diligent efforts shall be made by the Telegraph Company to secure the removal of such injunction.

In cases where an application has been approved by the Exchange and the Telegraph Company has been serving the quotations under the provisions of this contract, and the Exchange shall give notice to the Telegraph Company to discontinue such service as provided herein, and legal proceedings shall thereupon be commenced against the Telegraph Company or the Exchange on account of such discontinuance, said proceedings shall be defended by said Exchange which shall, and hereby does, agree to pay all counsel and attorney's fees, costs, charges, damages, fines, expenses and penalties to which the said Telegraph Company may be put by such discontinuances or refusal to serve said quotations; and the Exchange may at its option employ its own counsel and attorneys to defend such legal proceedings.

In cases where an application has not been approved by the Exchange and legal proceedings shall thereupon be commenced against the Telegraph Company on account of its refusal to furnish said quotations, the Telegraph Company shall at its own cost and expense defend such litigation and shall use diligent efforts to secure the removal of any injunctions obtained in such causes, in cases where the Exchange may so desire or request.

In cases where an application has not been approved by the Exchange and legal proceedings shall thereupon be commenced by such applicant for said quotations against the Exchange on account of its refusal to permit the Telegraph Company to serve the said quotations the Exchange shall at its own cost and expense defend against said litigation thus instituted against it.

Third: The Exchange agrees that it will not grant the privilege of receiving and transmitting or using, nor will it furnish to any person, party, firm, corporation, other than the Telegraph Company and the Gold and Stock Telegraph Co., any quotations originating on the floor of the Exchange, nor will the Exchange, so far as it can lawfully prevent the same, permit, suffer or allow any of its members to transmit, distribute or deliver for sale any of the said
96 quotations originating on said Exchange, nor will said Exchange do any act whereby any other person, firm or corporation other than the Telegraph Company, party hereto, and the above mentioned Gold and Stock Telegraph Co., shall acquire any right to receive, use, transmit, or deliver for sale or for distribution any of the said quotations originating on the said Exchange.

For the purpose of protecting the Telegraph Company against the use of any quotations originating on said Exchange by parties not entitled — them, the Telegraph Company may prosecute *by* suit, injunction or other legal remedies proper and suitable for the prevention or stoppage of such competitive use, either in its own name or the name of the Exchange or its proper officers, any party or parties ob-

taining or using said quotations not entitled to them, whether obtained from the Exchange or its members, officers or employees, or otherwise: and in case the Telegraph Company shall sue or proceed in the name of the Exchange, the Exchange shall, by its proper officers, do all such proper acts and things, and sign all such proper and necessary papers, in order to enable the Telegraph Company to conduct said proceedings with due diligence and effect. All such suits and other legal proceedings, whether carried on by the Telegraph Company in its own name or in the name of the Exchange, shall be at the sole cost and expense of the Telegraph Company, and the Telegraph Company agrees to indemnify and save harmless the Exchange of and from all damages, expenses, costs, charges, and fees incurred in or arising out of any such suit or proceeding.

Fourth: For the purpose of this agreement the term "member of the Exchange" shall be construed to include any firm, one or more of whose partners are members of the Exchange, and the term "continuous quotations," wherever used in this agreement, shall be construed to mean every service of quotations wherein the price of cotton shall be quoted oftener than at intervals of fifteen (15) minutes.

The Telegraph Company shall have the right to serve to its
97 customers quotations at intervals of more than fifteen (15) minutes without submitting applications therefor to the Exchange.

Sixth: It being the intention of this agreement that the quotations to be furnished by the Exchange to the Telegraph Company shall be substantially such as have been furnished in the past by the Exchange to the Telegraph Company, or such as have been collected and compiled and transmitted by the Telegraph Company itself under the contract of November 9, 1894, and the additional agreement of the 21st day of March, 1903, and the nature of the business rendering it impossible to insure absolute accuracy or completeness in said reports it is hereby especially understood that while the Exchange shall use reasonable diligence in collecting and transmitting the said quotations as fully, completely and accurately as may be practical, yet it shall not be liable to the Telegraph Company or any of its customers for any delays, inaccuracies, errors or omissions in said quotations, or for any damages arising therefrom or occasioned thereby.

Seventh: The parties hereto agree that if at any time hereafter and before the expiration of this contract any dispute or difference shall arise between them concerning the true intent, meaning or construction of anything contained in this contract, or concerning any matter included within the spirit or scope thereof, or concerning the acts or omissions of the Exchange or of the Telegraph Company, then and so often as a dispute or difference shall arise, any and all such matter in difference shall be submitted and referred to the award and determination of three arbitrators to be chosen, one by the Exchange another by the Telegraph Company, and the third by the two chosen, and the decision or award of any two of the arbitrators in writing shall be binding and final between the Exchange

and the Telegraph Company and shall be carried out and performed by the said Exchange or the Telegraph Company, as the case may be.

Eighth: The Exchange hereby agrees that in passing upon application for the said continuous quotation service presented by
98 the Telegraph Company and the Gold and Stock Telegraph Co., the Exchange will act without discrimination between them, and whenever the Exchange shall have before it at the same time applications from the same person, firm or corporation presented through both the Telegraph Company, party hereto, and the Gold and Stock Telegraph Co., if it approve the said applications it shall notify at the same time both the said telegraph companies of such approval. This shall apply either when the application is approved affirmatively or by the failure of the Exchange to act on the application.

Ninth: The provisions of this agreement shall take effect on the first day of August, 1903, and shall be and continue in force for and during the full term of one year from said date, and shall further continue at the expiration of such term from year to year unless either party shall give written notice of termination at least (30) thirty days prior to the expiration of said term: and after the close of said term of one year either party may terminate this agreement at the end of any contract year after having given notice in writing of an intention so to do, at least thirty (30) days before the close of said contract year.

The agreements between the parties hereto dated respectively the 9th day of November, 1894, and the 21st day of March, 1903, and all supplements and additions thereto for outgoing continuous quotations are hereby cancelled.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

THE POSTAL TELEGRAPH CABLE COMPANY,
By W. H. BAKER, *Vice-President.*

Attest:
CHAS. R. BRUCH, *Secretary.*

THE NEW YORK COTTON EXCHANGE,
By R. P. McDOUGALL, *President.*

HENRY H. WHEELER, *Secretary.*

99 Also the original contract between the Gold & Stock Telegraph Company and Duncan & Reisser, of date September 2, 1901:—

Form 1020. Duplicate.

Application for Quotation Service.

MEMPHIS, TENN., *Sept. 2nd,* 1901.

To the Gold & Stock Telegraph Company:

You will please furnish Duncan & Reisser & Co., at # 276, Front St., with Cotton quotations by ticker.

We agree to pay you Twenty-five dollars per month for said service.

We further agree, that this service shall be subject to the following

Conditions.

The Gold & Stock Telegraph Company will furnish to its subscribers as correct cotton Quotations, and general Commercial News Reports, as it can obtain by the employment of experienced reporters; but in view of the difficulties inherent in the business, the Company will not be pecuniarily responsible for the accuracy of such quotations and reports, nor for errors, delays or omissions in the service.

These reports are furnished to subscribers for their private use, in their own business, at the office which they are furnished, exclusively. It is expressly required and stipulated, that such subscribers shall neither give away nor sell the reports, or copies of same, whether in whole or in part, to others, nor cause or suffer the same to be used or copied for use of publication at, or to be transmitted to, any point other than said office. The subscription by one party for the benefit of himself and others, at their joint expense, will not be received. The reports furnished as above are not to be used for the carrying on of any private or public Exchange, Bucket Shop, or Pool Room, or in any public room, office or other place where the same are, or may be, used to regulate speculative or other sale, at any public gathering.

100 We further agree, that you may forthwith discontinue said service without notice, whenever, in your judgment, any breach of the above conditions shall have been made by us.

DUNCAN & REISSER & CO.

Accepted subject to termination at the will of this Company.

THOS. F. CLARK,
Vice-Pres. G. & S. Tel. Co.

NOTE.—The company makes no charge for furnishing a connection to a new subscribed, if the expense of extending the wires to his office does not exceed one month's rental. When it does exceed that amount, the subscriber will be charged with the excess, but his written authority will be obtained before that expense is incurred.

101 It was agreed by counsel representing the respective parties that a contract was executed between the Gold & Stock Telegraph Company and the Memphis Exchange, or Clarence P. Hunt, identical with the Duncan and Reisser contract, except as to date, and for the purpose of this case, it might be considered of the same date as the Duncan and Reisser contract.

It was agreed by the counsel that the compilation of the charter and by-laws of the New Cotton Exchange, as contained in the 16th Edition thereof published by the New York Cotton Exchange, should be considered as offered in evidence to be used by either party to the proceedings, and that a copy of the charter of the New York Exchange therein contained should be admissible for all purposes as evidence, subject to exception for competency or relevancy.

Mr. RANDOLPH: In connection with this line of proof, we will offer this record here in the Chancery Court. It is styled Clarence P. Hunt, *et al. vs.* Western Union Tel. Co., and Duncan and Reisser *vs.* Western Union Tel. Co., and also additional proof of Odell Co., corporation, *vs.* Western Union Tel. Co. The object of this is to give these defendants the benefit of the contract which I have just read. After setting out the contract, they state they had been engaged in business here a number of years, and that they had been notified that these tickers would be taken out, &c. &c.

Mr. ROBBINS: I object to the offering of this evidence as it is not material.

Mr. RANDOLPH: It sets up what the matter in controversy is. It shows that it is just worth $25.00.

COURT: It was not between the same parties.

Mr. RANDOLPH: It is only a circumstance.

COURT: I do not see that it affects this controversy one way or the other. I can not promise that I am going to read through all that record.

102 Mr. CRAFT: It is all set out and alleged in the original bills.

First Witness, A. B. DUNCAN, being duly sworn, deposed as follows:

Examination in chief by Mr. RANDOLPH:

Q. Please state Mr. Duncan if you are one of the defendants to this suit?

A. Yes sir.

Q. You are a broker in the City of Memphis?

A. Yes sir.

Q. How long have you been so engaged?

A. Since September, 1901.

Q. Look at that contract, Mr. Duncan, and tell the Court what is is?

A. It is an application for quotation service with the Gold & Stock Telegraph Company, dated Memphis, Tenn., September 2, 1901. Shall I read it?

Q. No it has been read. Now, did you commence business under that contract, or had you been in business before?

A. That is when I first commenced.

Q. When you first commenced?
A. Yes sir.
Q. Now, Mr. Duncan, what have you done since that contract was made in the way of carrying on business?
A. We have continued business under this contract.
Q. Until now?
A. Yes sir.
Q. That contract reads there that you are to pay $25.00 a month. Have you paid that sum?
A. Yes sir.
103 Q. Each month?
A. Yes sir.
Q. Have you been using that ticker and receiving these quotations?
A. Yes sir.
Q. All the time?
A. Yes, sir, all the time.
Q. Mr. Duncan, is there anybody else in the City of Memphis who has a contract like that, or who is receiving quotations like you are?
A. There are other parties receiving the quotations. I could not say about their contract. I suppose they are the same thing.

Mr. ROBBINS: I move to strike that out, "I suppose."

Q. State what you know about it. They have got tickers?
A. Yes sir.
Q. Have you seen the tickers work?
A. Yes sir.
Q. Are they connected with the Western Union Tel. Co.?
A. Yes sir.
Q. Now Mr. Duncan, have you a list of those persons?
A. Yes sir.
Q. Please pro*b*uce it.

Mr. ROBBINS: Your Honor, I do not see the materiality of that.
Mr. RANDOLPH: Your Honor, I want to prove that each one is paying the same.
COURT: I suppose you gentlemen will admit that?

Q. You can proceed, Mr. Duncan.
A. Mess. Sledge & Norfleet, Jas. S. Patterson, Wynn Love & Co., Planters Cotton Co., Godfrey Frank & Co., Farnsworth & Evans, Knoops Frerischs & Co., Dilard & Coffin, Robert, Wolfenden & Co., W. C. Knight, W. A. Gage & Co., F. M. Crump & Co., Martin Phillips & Co., Duncan Reisser & Co., Memphis Exchange, Madison Foster & Co., L. H. Lanier, H. H. Reese, Moorhead & Co., Logan & Bryan.
104 Q. Now, each of these gentlemen, or these firms, are receiving quotations by the ticker just like you do in Memphis?
A. Yes, sir.
Q. How long have they been doing so?
A. I could not say; some at one time, some at another.
Q. Some longer than you and some shorter?
A. Yes, sir.

Q. You have received quotations, I believe you said, under that contract?

A. Yes, sir.

Q. And you paid the price stipulated for the quotations each month?

A. Yes, sir.

Mr. RANDOLPH: Gentlemen, I think you will admit, it will save taking the proof, that each one of these gentlemen are paying the same.

Mr. ROBBINS: Yes sir, we will admit that, paying at least $25.00.

Mr. RANDOLPH: We claim they are not paying any more.

COURT: Then, gentlemen, I understand the agreement is that they are each paying $25.00 per month.

Mr. ROBBINS: But it is not admitted that they are paying that under this form of contract.

Mr. RANDOLPH: Now will you furnish the form of contract.

Mr. ROBBINS: You will find it in the bill.

COURT: I think that is immaterial; they are not parties to this suit.

Mr. RANDOLPH: The allegation in the bill is that no one but Hunt is receiving it that way.

Mr. CRAFT: Of course, you understand they are not receiving these quotations under authority from the New York Cotton Exchange; that appears in the bill, then it is alleged that certain other parties are receiving quotations under some form of contract or agreement, we know not what.

COURT: I understand the question at issue to be, does this
105 bill show upon its face the value of the contract to be as much as $2000 or over. The insistence of the defense is that this contract of Hunt involves only $25.00 a month.

Q. Now Mr. Duncan, have you ever denied, or do you deny the property rights of the New York Exchange in New York cotton quotations?

Mr. ROBBINS: I object to that as immaterial.

Mr. RANDOLPH: We are not contesting their property rights in New York, but I will *rpove* by him that——

COURT: I do not think it will make any difference whether he denies it or not.

Q. Are these ticker quotations handled and used in your office?

Mr. ROBBINS: Objected to as immaterial.

Col. CARROLL: Your Honor the question of the money value of these quotations lies in the fact that the plaintiff is entitled to have information as to market quotations protected, so that there must be a line of demarcation between protection and publicity. Now, there are about 18 ticker services here and they register information contemporaneously, and the moment it passes beyond that circle, the quotations cease to be of value—the moment it becomes public property it ceases to be of value. Now, we propose to show to your Honor

that this information or quotations instantly becomes public and that it then becomes of no value.

Q. Now, Mr. Duncan, how are these quotations received and what is done with them?

A. They are received on continuous tape, and we post the quotations on our blackboard from that ticker.

Q. How often do these quotations come from the ticker?

A. Sometimes every half minute, sometimes every minute, and sometimes a little longer between times and sometimes a little less.

Q. How long afterwards are they placed on the blackboard?

106 A. Just immediately as soon as they can be placed on the blackboard.

Q. How long do the quotations placed on the blackboard stay there?

A. A very short while, continually rubbing them out.

Q. How long on an average?

A. I would say on an average a minute, may be a few minutes.

Q. Wiped out entirely every minute?

A. No sir, possibly longer than that—when the ma-ket is dull they come very slowly.

Q. And they are all marked off?

A. No sir, not always, we run them down in a column, and then rub out all except the high and low.

Q. Who can come into your office?

A. Anybody that wants to.

Q. All the time?

A. Every day except Sunday.

Q. How long are quotations valuable?

Mr. ROBBINS: I object to that.

COURT: I do not see how that is material.

Q. Whose property is that, yours or the Telegraph Company's?

A. The ticker it belongs to the Telegraph Company.

Q. Have you been on the New York Cotton Exchange?

A. No sir.

Q. Have you been in any other cotton exchange?

A. I have never been in any except Memphis.

Q. Are there tickers in the Memphis Cotton Exchange?

A. No sir, not on the floor on the Cotton Exchange.

Q. The universal practice everywhere is to put the quotations on a blackboard?

A. I think so; it is here.

Q. How long are these quotations of value—as long as you keep them on the blackboard?

107 Mr. ROBBINS: I object to that.

Mr. CARROLL: The question is, the insistence, if the system is to register contemporaneously the ticker service on the blackboard, then the market quotations come within the realm of public property, and upon this question on the issue before the Court, we are entitled to be heard. There is evidence here that about 18 persons receive these quotations at the same time.

Q. How long have these quotations value after they are put on the blackboard?

Mr. Robbins: I object to that as immaterial.

Court: I think the question involved here is the value of the contract between the New York Cotton Exchange and the Western Union Tel. Co.

Cross-examination by Henry S. Robbins, Esq.:

Q. Mr. Duncan, you say you are a broker?
A. Yes sir.
Q. What commodity do you deal in?
A. Cotton, stock, grain and provisions.
Q. Are you a member of the New York Cotton Exchange?
A. No sir.
Q. Nor the New Orleans Cotton Exchange?
A. No sir.
Q. Chicago Board of Trade?
A. No sir.
Q. Or the New York Stock Exchange?
A. No sir.
Q. Have you any agents or correspondence in other places than Memphis?
A. I do not understand exactly what you mean.

The Court: I do not see how that is material.

108 Mr. Robbins: I propose to show that he is not a broker, but a trader.

Court: I think it makes no difference which he is, but you may go ahead and ask the question.

Q. Have you any agents or correspondence in other places outside of Memphis?
A. No sir, but we have customers.
Q. In other states?
A. Yes sir.
Q. Are they connected by wire with your office?
A. No sir.
Q. You have no wire running out of Memphis?
A. No sir.
Q. You say you are a broker?
A. Yes sir.
Q. When a customer comes into your office and offers to buy or sell 100 bales of cotton for, say July delivery, do you transfer that contract to any other exchange first and execute it there?
A. No exchange outside of Memphis.
Q. Do you make good on any exchange in Memphis and there make a contract?
A. No sir.
Q. In other words, when a man comes to the counter and offers to make a contract such as I have indicated, you determine whether you will accept his contract or not?
A. Yes, and we send the business to the Memphis Exchange.

Q. The Memphis Exchange?
A. The Memphis Exchange.
Q. What is the Memphis Exchange you speak of?
A. Mr. Hunt is the manager of it.
Q. Mr. Hunt is the manager of it?
A. Yes sir.
109 Q. And you send all your offers over the wire to Hunt?
A. Yes sir.
Q. Are they all orders offering to buy or sell on future orders for cotton?
A. No sir.
Q. What other commodities?
A. Stock, grain and provisions.
Q. How much in the aggregate of business of this character on cotton do you send to Mr. Hunt in a month approximately?
A. That would be right hard to say.
Q. Give your estimate?
A. You mean money value.
Q. No, I mean measured by bales?
A. In a month, well I should say several thousand bales.
Q. And they are all for future delivery?
A. Yes sir.
Q. And that would give multiplied by twelve the average amount of business sent to Mr. Hunt in a year?
A. Yes sir.
Q. You charge a commission?
A. Yes sir.
Q. On that business to the customer?
A. Yes sir.
Q. How much?
A. Fifteen cents a bale.
Q. That is the same amount charged by the New York Cotton Exchange?
A. Yes sir.

And further deponent saith not.

110 The next witness, C. P. HUNT, being first duly sworn deposed as follows:

Direct Examination.

By Col. CARROLL.

Q. Mr. Hunt, will you state your business to the Court?
A. I am a broker.
Q. Where are you engaged?
A. In Memphis, 118 Madison Street.
Q. How long have you been so engaged?
A. Since 1899, latter part of March or first of April.
Q. Are you or not a member of the Memphis Cotton Exchange?
A. I am.
Q. How long have you been such a member?
A. Ever since it was organized.

Q. Do you recall when the ticker became first in use?

A. I cannot recall exactly, but for years.

Q. In the course of your business have you not used such instrument?

A. Yes sir, for the purpose of comparison.

Q. Have you continuously used that instrument?

A. Yes sir, ever since we have been in business.

Q. Explain what you mean by ticker?

A. It is a machine with a tape attached to it which registers the prices of cotton, giving the hour, sometimes the quotations are not more than a quarter of a minute or half a minute apart, sometimes more or less. When the market is dull or the wires are working badly the quotations do not come fast. The quotations are then copied from the tape and placed on a blackboard where all can see it, and as soon as new quotations are received the old ones generally are rubbed out.

111 Q. Do you deal directly with the New York Cotton Exchange?

A. No, of course, I do not deal directly, but on account of the large business we have built up we have made a good many customers for them, which they do not know about. We have customers all through Mississippi, Louisiana and Texas, and have built up a large and extensive business.

Q. In point of time what is the difference between the time of the receipt of your market quotations and other market quotations on the blackboard?

A. That depends upon the source of information we have. Ganong & Fitzgerald receive their quotations about five minutes before we do. They have better wire service, have their own copper wire, and we go there to get information very often. This ticker service is very slow, and it depends, the value of it depends on the time it is received. After it is placed on the blackboard it becomes public property, so far as concerns the value of it.

Q. How many members are there of the Memphis Cotton Exchange?

A. 200.

Q. What different course is pursued in the Memphis Cotton Exchange with reference to transcribing quotations registered by the ticker on the blackboard?

A. They have a wire running right into the exchange that transcribes the quotations. They are not dependent on the ticker.

Q. In point of time, how much time elapses from the time the ticker registers the market quotations to the time when the market quotations are registered on the blackboard in the City of Memphis, such blackboards open to the public?

A. Not quite a minute.

Q. You are a member of the cotton exchange?

A. I was for years.

112 Q. How many years?

A. When the building was first built, and I was a member before that.

Q. Now, how many members are there of the New York Cotton Exchange?

A. I think 500. There was when I was a member. I do not know whether it has increased or not.

Q. Wherein does your business differ from the business of Armstrong & Company?

A. Not one iota, except we deliver a good deal more business than they do.

Mr. ROBBINS: We move to strike that out.

COURT: Who is Armstrong & Co.?

A. They used to be on the New York Cotton Exchange.

COURT: The motion will be sustained.

Mr. RANDOLPH: It is competent to show that he did the same business as they did.

A. May I make a statement?

Mr. ROBBINS: No I object to that.

COURT: I think he may make a statement. He is a party to the suit, and he can give any information that may throw light on this inquiry.

A. I just want to say that our business is *ad*solutely and purely legitimate. For instance, a gentleman walked into our office a few months ago and said, "Sell me 200 shares of Southern Pacific," and I told him to give me $400 as margins, and he put his hand in his pocket and handed me 200 shares of stock, and I gave him a check for it, and we are doing that every day. I just happened to remember that, and I do not see why my business is not as legitimate as anybody else's.

COURT: That question we are not trying now. We have not got that for in the investigation.

Cross-examination.

By Mr. ROBBINS:

113 Q. These other offices you have are connected by wire with your office?

A. Yes sir.

Q. And you call that office the Memphis Exchange?

A. Yes sir.

Q. What do you say the volume of business of these offices was?

A. I have no idea. It is large enouge to put 75,000 or 100,000 bales on the market.

Q. And do you charge a commission?

A. Yes sir.

Q. On that business?

A. Yes sir.

Q. And you divide that with Duncan & Reisser?

A. Yes sir, local business. We do not divide outside business.

Q. And when you have got too much business for your own business you get some member of the New York Cotton Exchange to execute the business on the New York Cotton Exchange?

A. Yes sir.

Q. What commission do you pay?
A. I pay 5 per cent.
Q. And you get 15 from the customer?
A. For part of it, and part of it I lose money on.
Q. Could you give an estimate of the amount of your business in cotton for future delivery per year?
A. I could not form an idea. I could get at it by looking at the books.
Q. Well, generally?
A. I suppose it will amount to at least half a million bales.
Q. When these offers come to you, I am not speaking of the offers you would turn over indirectly to the brokers on the New York Cotton Exchange, but the offers that are accepted and retained
114 by yourself, what do you do?
A. What do I do. I take the trade myself.
Q. You accept the offer made you?
A. Yes sir.
Q. You are the other end of the trade?
A. Yes sir.
Q. So all of this business is a trade between you and the customer?
A. Practically that. I take a certain amount of it.
Q. Then a certain amount of the business, you retain yourself, and you are the principal or the buyer or seller and the customer has the other end on the various offers that are made?
A. Yes sir, but we never take over 5,000 bales at one time.
Q. In all of these deals you are acting as principal?
A. Yes sir.
Q. And you do not carry them to the exchange for execution?
A. Yes sir, the big orders, and some are transmitted to other exchanges.
Q. I am speaking of the business you do not turn over, on that business you do not execute on the exchange?
A. Yes sir, I take the risk myself. In that business I gamble on it myself.
Q. I did not ask you that?
A. Well, I told you that I was taking the risk myself, in other words I gamble on it like the majority of the people do on the New York Cotton Exchange.

Mr. Robbins: I move to strike out that answer as not responsive to the question.
Court: If you move to strike it out as not responsive to the question, it is allowed.

Q. These persons such as Armstrong & Co., they are private brokers?
A. Yes sir, that is my information.
Q. All of these people?
A. A great many of them are cotton factors and cotton buyers.
Q. They are all in the busines themselves?
A. Yes sir.

Q. And they all occupy offices?
A. Yes sir.

115 Redirect examination.

By Col. CARROLL:

Q. When you take a trade yourself, are you prepared to deliver the cotton or commodity in conformity to the agreement between you and the purchaser, or the seller as the case may be?

Plaintiff objects on the ground that that question is not now before the Court as to whether the witness is a bucket shop man.

Objection overruled, and the witness is instructed to answer as to the form of the contract but not as to the extent of the delivery.

Q. Answer the question?
A. Yes sir, we are prepared to deliver, and we even go as for as to have written across all of our orders, that in all cases the actual delivery is contemplated and understood.

Recross examination.

By Mr. ROBBINS:

Q. Let's see about that question of delivery. When you sell or buy, when you sell to the customer or buy from a customer 100 bales of cotton, it is sold or bought at the market price as shown by the ticker?
A. Yes sir, and subject to the rules of the New York Cotton Exchange.
Q. So far as buying the actual stuff you are buying in Memphis and paying in New York prices?
A. I do not know whether I am or not. I am buying in New York with New York delivery, and I get a certificate of the cotton. Say I get a certificate for 100 bales of cotton, I give it to a man and he pays me for it. I do not buy any cotton in Memphis. They would kill me.
Q. When did you last deliver cotton and to whom?

Objected to by defendant as incompetent, and not being
116 pertinent to the matter at issue.

Said objection is by the Court sustained, to which action of the Court the plaintiff excepts.

Witness excused.
This was the defendant's case.

Evidence for the Complainant.

JOHN HILL, JR., the first witness for the complainant being first duly sworn, deposed as follows:

Direct examination.

By Mr. ROBBINS:

Q. Where do you reside?
A. Chicago.
Q. What is your business?
A. Expert in matters pertaining to the stock exchange.
Q. Are you a member of the Chicago Board of Trade?
A. Yes sir.
Q. How long have you been a member?
A. For 27 years.
Q. Have you had anything to do with the question of quotations or keeping quotations from bucket shops, for the Chicago Board of Trade?
A. I have.

Objected to by defendants on the ground that this has nothing to do with the quotations or principal of quotations on the New York Cotton Exchange.

Mr. ROBBINS: The purpose is to show his qualifications?

COURT: I will let you show his qualifications?

A. I have.
Q. In what capacity?
117 A. I had charge of the office; books and the records of the Chicago Board of Trade from the time the contract was made with the telegraph company in 1901 up to the last of December, 1905, and have carried on the investigations for the committee, and directed to some extent the litigation, and employed the men to help to properly care for the work of keeping the quotations from bucket shops and investigated all applicants who may require the quotations under the contract with the telegraph company.
Q. Does the Chicago Board of Trade impose the same restrictions upon the distribution of these quotations that the Cotton Exchange imposes upon its contracts with the telegraph company?

Defendant objects on the ground that this has nothing to do with the present controversy.

COURT: He can answer the question only for the purpose of qualifying himself. It does not have any connection with this law suit.

A. It does.
Q. And had it during the whole period of the time that you have referred to?
A. Yes sir.

Defendant moves to exclude the last two questions and answers from the consideration of the Court.

Motion overruled, to which the defendant excepts.

Q. Did you have any connection in an official capacity with the subject matter of bucket shops and quotations prior to the date in 1900 that you have referred to?

A. Yes sir, I was employed by the Board of Trade as expert to investigate persons who pretended to be brokers, and who were in fact bucket shops, and I was in that position for several years prior to 1900, and worked more or less from about 1895 at that.

Q. Did that position or your connection with the Board of Trade enable you to ascertain the number of bucket shops and the
118 volume of their business daily in the country?

A. I gathered statistics and made estimates of the volume of busines during the years 1901 and 1902, and kept pretty well informed ever since as to the number of bucket shops in the United States.

Q. Are you in a general way familiar with the aggregate amount of volume of business of bucket shops?

Defendants object to this question and to this line of inquiry.

COURT: Counsel claims that these questions will qualify the witness to answer some question that he is going to ask him that is material.

A. Yes sir.

Q. You spoke of litigation carried on while you were in this official capacity for the Chicago Board of Trade?

Defendants object to the question as this does not tend to qualify the witness.

COURT: I do not see that this will throw any light on this controversy, but he can answer that question now, but that is the extent of the question.

Q. Let me ask one other question. Can you state what kind of trade, or the trade in what commodities are carried on in these bucket shops?

A. Trades are carried on in all commodities that are traded in on the exchanges, cotton, stock and grain, that are traded in on the three principal exchanges, the New York Cotton Exchange, the New York Stock Exchange and the Chicago Board of Trade.

Q. Do all bucket shops trade in all of these commodities?

A. Generally speaking they do, but in some portions of the country, but some trade in cotton, and other portions, grain, and in the East, stock. In the South the large trade is in cotton, in the West, grain and in the East, stocks.

Q. What in your opinion, is the value to the New York Cotton Exchange of its right under its present contract to keep these quotations from bucket shops?

119 The defendants object to the question as wholly incompetent and irrelevant.

The objection sustained, to which the complainant excepts.

Q. What in your opinion is the value of the right of the New York Cotton Exchange to confine its quotations—to confine the distribution of continuous quotations to such persons as sign the ap-

plication which it has prescribed for applicants to sign, and its right to pass upon the question whether such applicants shall receive the quotations?

Defendant- object to the competency of the question for the reasons already given.

Objections overruled, to which the defendants except.

A. A great many thousands of dollars.

Defendant- moves to exclude the question and answer as incompetent.

COURT: The motion will be disallowed.

To which action of the Court the defendants except.

Q. Can you be more specific as to the value?

A. One can only estimate or approximate the value of the right for the reason that the volume of speculative business in the country changes, and that changes the value of the right. If there is a large volume of speculative business in cotton the value to the New York Cotton Exchange would probably amount to a million dollars, while with a depressed market it would not amount to more than $200,000 or $300,000.

Q. You mean for a given time?

A. For a year. I was speaking of a year.

Defendants move the Court to strike the last two questions and answers for the reason that they are incompetent.

Objection, or motion overruled by the Court, to which action of the Court the defendants except.

Q. You have heard the testimony of Mr. Hunt that he has 40 or 50 officers connected by wire outside of Memphis. That is true of bucket shops generally, isn't it, do they confine their business at one place, or do they connect with other wires running into other states and cities?

120 A. There are between 10 and 15 very large bucket shops or systems in the United States with headquarters in the principal cities of the United States, and they operate a long system of wires with a large number of offices. Of this system Odell Commission Company of Cincinnati is perhaps the largest. I do not know whether they reach Memphis or not, but they reach other cities over the country, and they have about 120 offices on their wire.

Q. And to a more or less extent that is true of all bucket shops?

A. Yes sir. I think the Odell System is probably the largest, but the number of offices will vary from 20 to 120.

Cross-examination.

By Col. CARROLL:

Q. Wherein is there any difference between a broker and a bucket shop?

A. The broker makes a legitimate transaction on the exchange in executing an order for a customer. The bucket shop rather pretends to make a trade and charges a commission, and acts as agent

and principal at the same time without the consent of the customer, and it is done without any transaction being made in any legitimate market.

Q. What is the difference between a contract to be performed by an independent dealer and a member of the Cotton Exchange with the person buying or selling?

A. A member of the exchange like the Cotton Exchange going upon the floor and executing the order for a customer, must of necessity contemplate the delivery or receipt of the property. He must make a transaction with a third person, and it is the meeting of two minds in the making of the transaction. The bucket shop simply makes a memorandum on a sheet of paper, as a pool room or any other place where a bet is made, and states that so and
121 so has bought so much stock, cotton or grain. And when the trade, or when the amount of margin which the customer has placed upon the transaction is exhausted the trade is wiped out in the bucket shop, and the money becomes the money of the bucket shop keeper. He wins the money from the customer. In an exchange transaction it shows upon the board of the board, and when the customer wants the stock, cotton or the commodity closed out it is closed out and the broker receives a commission, and that is all the interest the broker has in the transaction, while the bucket shop keeper wants to win the margin the customer puts up.

COURT: I wish you would explain that over again. He makes that difference as plain as mud to my mind.

Col. CARROLL: I was just startled at it myself.

Q. How much cotton is purchased actually on the New York Cotton Exchange?

A. I do not know.

Q. How many deliveries are finally made on the New York Cotton Exchange?

A. I do not know.

Q. Isn't the long and short of it that you simply have read the rules and by-laws of the New York Cotton Exchange?

A. I have been on the exchange and seen the transactions made.

Q. Did you ever make any transactions in your life?

A. Not on cotton.

Q. All that you know is theoretical?

A. I think I know it practically.

Q. Suppose you are a broker on the cotton exchange, and I ask you to buy me 100 bales of cotton, and you buy it, and I say to you when the time comes for me to receive that 100 bales of cotton under the rules of the New York Cotton Exchange, how do I receive it?

A. I take it in and pay for it, and charge you with the cost storage on it, and carry it for you, if you wish me to, carry the
122 storage receipts over for you, or I give it to you, upon your paying me its value.

Q. And that is the way the actual delivery is made to me?

A. Yes sir.

Q. Suppose I do not want to receive it, how do I get rid of it?

A. I have to make a counter sale upon which I will deliver the cotton.

Q. So if I make a trade with you, and buy 100 bales through you, and another party sells, you carry one against the other?

A. I might.

Q. Now if I might say to you that I want you to buy 100 bales of cotton for May delivery, and you will say you will sell it to me——

A. I will not say that. I will buy it for you.

Q. I am simply examining you on the hypothetical question, and using your name?

A. If you come to me and say you want to buy 100 bales I will say that I will buy it for you, and I would go to somebody else and get it.

Q. I am assuming that you would sell it to me?

A. Then I would become a bucket shop.

Q. Suppose I go to Mr. Randolph and want to buy 100 bales of cotton, and he and I make a contract whereby I agree to buy at a fixed price and he agrees to deliver at a designated time in May 100 bales of cotton, and you say that under your system whether it is a gambling transaction depends upon whether Mr. Randolph intended to deliver the cotton and I intended to receive it?

A. As I said it depends upon whether Mr. Randolph intended to deliver the cotton and you intended to receive it.

Q. And in that case if the intention existed on the part of one to deliver it would be a valid contract?

A. If that was the intention.

Q. However, if I intended to receive and he to deliver it would be perfectly valid?

123 A. Yes sir, just the same as a planter selling, but neither one would charge a commission.

COURT: The difference then is that the man doing business on the cotton exchange is an agent?

A. Yes sir, an agent.

COURT: And the other acts as principal and not agent?

A. Yes sir.

Q. And the man doing business down here is doing business without an agent?

A. Down here he is, but he is charging a commission.

Mr. TUILEY: I want to ask the witness a question.

Examination by Mr. TURLEY:

Q. Mr. Hill, I understand from what you have stated just now if you were a broker on the New York Cotton Exchange, and you had an office as a broker in cotton, and I went there and said I wanted to buy 100 bales of cotton. Then the broker would have, under the rules of that exchange to go and buy that 100 bales?

A. Yes sir.

Q. Now do you mean to tell us and tell the Court for every trade that is male that there is the equivalent amount of cotton in a warehouse upon which some warehouse man can issue an honest, *bona fide* receipt or certificate that the cotton is there?

A. You mean for every trade that is made?
Q. For every trade that is made?
A. No sir, because cotton——
Q. Don't you know as a matter of fact that there is ten times as much cotton bought and sold every year on the New York Cotton Exchange than there is bales of cotton raised in the world?
124 A. No sir.
Q. Don't you know that it is largely more?
A. I know that the same cotton is sold over and over again.
Q. Well, if it sold over and over again, it would be just as well to have one bale?
A. No, that is not a fact.
Q. No, but you are testifying here that all trades on the New York Cotton Exchange are *bona fide* and the cotton is there to fill them?
A. Yes sir.
Q. Suppose that a sale is made, and there is not enough cotton on hand anywhere to fill it?
A. I should say that it would not be possible, and I will explain to you why?
Q. Just explain.
A. I have 100 bales in the New York Cotton warehouse, and I sold it to Mr. Robbins three months ago for this month's delivery, and he might sell it to Mr. Carroll, and Mr. Carroll would sell it to Mr. Randolph and it would go up and down until it would get back to the original man, and you did not have any actual delivery.
Q. On that theory you could take 100 or 200 bales of cotton and do all of the business?
A. 100,000 bales will deliver a good many contracts.
Q. Don't you know in the large majority of cases in these dealings on the New York Cotton Exchange when the time comes for a man, it makes no difference whichever way the market has gone, whether down or up, and if you bought for him or sold, don't you on the wind up just give him credit for the difference and pay it to him?
A. No sir.
Q. Doesn't somebody else?
A. No sir, and I will tell you what is done.
125 Q. Well?
A. You have 100 bales of cotton bought from me for March delivery and you come into my office and you do not want to take in that cotton, then I go on the cotton exchange and offer 100 bales of cotton and the next day the cotton is delivered to me.
Q. What do you do with it when it is delivered?
A. Take it and pay for it.
Q. Would you have any place to put it?
A. It is in the warehouse.
Q. You say there is cotton enough down there to fill all of the contracts—that is what I want to know? In my judgment that is a play of words, and do you mean to say that in the New York Cotton Exchange, taking its dealings all the way through, it would be

possible to make actual delivery of any one of these contracts, that is put the cotton in the warehouse?

A. The cotton does not have to be in an individual warehouse of the person who buys it. There are public storage places for cotton. The act of delivery is simply the passing of the warehouse receipt,

Q. How much cotton is on storage in New York?

A. I do not know.

Q. And you have no idea how much is bought and sold every day?

A. Nobody does.

Q. Now, I will ask you again, isn't it a fact between man and man that all of this question about delivery of cotton cuts no figure in the trade at all *at all*, no matter whether on the New York Cotton Exchange or the New Orleans Exchange?

A. It does cut a figure.

Q. Will you say this to the Court, that on every one of these contracts as they fall due that a man can go and get his cotton?

A. Yes sir, any man that wishes.

126 Q. Suppose that every man would want to?

A. Every man would not want to.

Q. Don't you know as a matter of fact that this business is done on the theory that there is not one man in a thousand that will ever want his cotton?

A. I do not know that. I do not know what every man wants to do.

Mr. RANDOLPH: Let me ask him a question.

Examination by Mr. RANDOLPH:

Q. You spoke about warehouse receipts. Are there warehouse receipts used in these transactions in New York?

A. Yes sir in cotton.

Q. Showing the actual deposit of cotton in the warehouse?

A. Yes sir.

Q. You have been there and seen them?

A. Yes sir, I have seen them.

Q. How often?

A. I never paid any attention to the number of times, but I have seen them.

Witness excused.

W. V. KING, the next witness for complainant, being first duly sworn, deposed as follows:

Direct examination.

By Mr. ROBBINS:

Q. You are superintendent of the New York Cotton Exchange?

A. Yes sir.

Q. How long?

A. I have been since June, 1898.

127 Q. How long have you been a member of the New York Cotton Exchange?

A. Since June, 1892.

Q. And have you had to do with the carrying out of the contract of July, 1903 with reference to the distribution of quotations?

A. Yes sir, I have had something to do with it.

Q. Have you, by reason of your connection with the Cotton Exchange become familiar in a general way with the question of what is called the independent trader, or independent trade, as distinguished from the trades or traders who carry their transactions to the cotton exchanges for execution?

A. Yes sir, in a measure.

Q. And with the volume of business done by such persons?

A. Well, in an approximate way.

Q. What in your opinion is the value to the New York Cotton Exchange of the right which it has under its present contract with the telegraph company to confine its quotations to such persons as shall sign the application in the form set out in the bill herein, and the further right of the Cotton Exchange to control the acceptance of those applications in the giving out of the quotations under that contract in the manner provided in the contract?

Objected to by defendants on the ground of incompetency and irrelevancy and because the matter inquired about is not in the controversy in this case.

Objection overruled, to which action of the Court the defendants except.

A. It would make a difference of fully one million dollars a year.

Q. You think that is the value of that right?

A. No. What I mean is that amount of business is diverted from the Exchange.

Q. What would the right referred to in the last question—what would be its value approximately in your opinion to the members of the New York Cotton Exchange, the right to control quota-

128 tions in the way it is now done?

Defendants object to the question on the same ground as indicated above, which objection is by the Court overruled, and to which action of the Court the defendants except.

A. I should say a very large amount.

Q. Would it exceed $2,000?

A. Very much.

Q. What was the value of a membership on the New York Cotton Exchange when the contract of February, 1903 was signed?

Defendants object to the question on the same ground as indicated above.

COURT: Yes, I do not think that is competent.

Mr. ROBBINS: I want to prove by the witness that prior to making the contract of February, 1903 the value of a membership in the New York Cotton Exchange was worth not to exceed $7,000, and the value of a membership today upon the exchange exceeds $20,000.

COURT: Let it be concluded.

To which action of the Court the complainant excepts.

Cross examination.

By Mr. CARROLL:

Q. Mr. King, what has been the relative amount of business in cotton in the New York Cotton Exchange in the years, 1903, 1904 and 1905?

A. There is no record kept of the transactions.

Q. There is no record kept?

A. No sir.

Q. Were the sales of cotton smaller in 1905 on the New York Cotton Exchange than they were in 1903?

A. I would not say positively, no sir.

Q. How were they in 1904 as compared with 1903?

A. I think there was a pretty fair *d*usiness done in the two
129 years 1903 and 1904.

Q. In short you are not prepared to state to the Court whether or not there was more cotton sold for future delivery in 1903 or 1904?

A. No sir, I am not prepared to state.

Q. And neither are you prepared to state to the Court whether there was less sold in 1905 than in 1903?

A. No sir.

Q. Then how do you undertake to estimate the value of this contract, if you are unable to tell the volume of business of that year as compared to the volume of the subsequent year?

A. In the first place there is no record kept of the transactions, and therefore I can't state that.

Q. But you have said to the Court that the value of that contract was a million dollars?

A. No sir, you misunderstood me. I said the value of business diverted to the bucket shops would be that much.

Q. And yet you are not able to state whether the business was greater for 1904 than it was for 1903?

A. That is correct.

Q. How do you reach the conclusion that the value of the business diverted from the Cotton Exchange amounts to one million dollars?

A. Partly from the evidence given here by Mr. Hunt.

Q. You are basing your opinion upon that then?

A. Partly and partly as to the business done by bucket shops.

Q. And your opinion is formed upon a speculative theory?

A. It is based upon information.

Q. What information have you got in regard to the matter?

A. Mr. Hunt's statement today.

Q. Then you came here not prepared to make a statement until Mr. Hunt testified?

130 A. No sir. I say that amount of business was diverted from the exchange by the bucket shops.

Complainant moves to exclude all of the above testimony as incompetent, and an opinion.

Said objection is by the Court overruled, to which action of the Court the plaintiff excepts.

Q. What do you say was the value of this contract independent of the amount of business diverted from the New York Cotton Exchange?

A. The value in dollars and cents was the amount the Exchange receives from the Western Union Telegraph Company.

Q. Now, Mr. King, what time, up to this good moment and hour has that exchange failed to receive the amount of that contract, that is, for giving the Western Union Telegraph Company the right to furnish this information gathered on the floor of the New York Cotton Exchange?

A. It has not.

Q. Then in short this here is nothing except fear and apprehension that unless these defendants are restrained that is likely to happen, and affect the value of the contract?

A. And the business upon the Exchange.

Cross-examination.

By Mr. RANDOLPH:

Q. Who would get the increase in the business that you spoke of being diverted; and now if this injunction is granted who would get that business, the Exchange or the members?

A. I think the business would naturally come to the members.

Q. Isn't it a fact that the Exchange would not get any part of it?

A. The Exchange would come in where the members were doing a good business and prospering.

Q. Wouldn't that be the only thing?

A. That is part of it, yes sir.

Q. Members of the Exchange are the only persons who can come upon the floor?

131 A. Yes sir.

Q. How do you get your information as to who are bucket shops and the extent of them?

A. We get information from all over the country.

Q. From what source?

A. We employ people to look out.

Q. And you are stating what these people have told you?

A. I am stating on information and belief.

Q. Do you get the reports from the newspapers?

A. No sir.

Q. You get it from individuals?

A. Yes sir.

Q. And from that you are basing your opinion here today?

A. Yes sir.

Q. And your personal knowledge?

A. Simply from information.

Q. Personally you do not know anything?

A. No sir.

Witness excused.

This was all the evidence.

132 In the Circuit Court of the United States for the Western Division of the Western District of Tennessee.

No. 601.

NEW YORK COTTON EXCHANGE,
vs.
CLARENCE P. HUNT.

Replication of the New York Cotton Exchange to the Ans-er of Clarence P. Hunt to the Bill of Complaint Herein.

Filed April 4, 1906. Dan F. Elliotte, Clerk.

This repliant, saving and reserving to itself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of said defendant, for replication thereunto saith that it doth and will aver maintain and prove its said bill to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of said defendant is uncertain, evasive and insufficient in law to be replied unto by this repliant; without that, that any other matter or thing in the said answer contained, material or effectual in law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all matters and things this repliant is ready to aver, maintain and prove as this honorable court shall direct and humbly pray- as in its bill it hath already prayed.

HENRY S. ROBINS,
HENRY CRAFT,
Counsel for Complainant.

133 UNITED STATES OF AMERICA,
Western Division of the Western District of Tennessee.

In the Circuit Court of the United States Within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit thereof.

Proceedings had in said Court at a regular term thereof, begun and held for its November Term, A. D. 1905, at the United States Court House in the City of Memphis, in said District, on to-wit: 4th day of April, A. D. 1906, in the following cause to-wit:

No. 601.

THE NEW YORK COTTON EXCHANGE
vs.
CLARENCE P. HUNT.

This cause coming on for final hearing upon the bill and exhibits thereto, the answer of the defendant, the replication of complainant

thereto, the agreement of counsel for the respective parties filed in the cause on the 5th day of March, 1906, in the words as follows:

"It is hereby stipulated for the purpose of the hearing of the above entitled cause, and for no other purpose whatever, that,

First, Paragraph- 1, 2, 3, (down to and including the words by 'open *viva voce* bidding'—4, 6, 7, 8 and 9 of the bill filed herein, are true;

Second, that the affidavit of W. J. Dealy and John Costelloe heretofore filed herein, shall be deemed depositions in this cause with the same effect as if the matters therein recited had been incorporated in the depositions of the parties respectively making such affidavits, formally taken in this cause;"

and upon the evidence given before the Court, and now shown by a transcript of same filed in this cause under order of the Court on the 12th day of March, 1906, arguments of counsel for the respective parties having been heard, and the Court being fully advised in the premises.

It is adjudged that complainant is entitled to the relief prayed
134 for in the bill, and it is ordered and decreed that a permanent injunction issue herein, restraining the defendant, Clarence P. Hunt, either acting in his own bewalf or as the member of any firm, or as the agent or office- of any person, firm or corporation, and also each and ev-ry of the agents, employés and servants of said defendant, from receiving, using, selling or distributing, directly or indirectly, the quotations of complainant or any of them, and from having, maintaining or permitting any telegraph or other wire running into or thorough his, its or their office, over which said quotations are passing, and from aiding, abetting and assisting, directly or indirectly, any person, firm or corporation, in receiving, using, selling or distributing said quotations until it, he, or they, or the person, firm or corporations, for which they or any of them shall be acting, shall have first lawfully acquired the right to receive said quotations, either by contract or purchase from complainant or with complainant's consent, and approval, from one of the Telegraph Companies, authorized by complainant to distribute said quotations, provided that so long as either of the telegraph companies is permitted by complainant to send out, without restriction or conditions to the public generally, any periodic as distinguished from continuous quotations, as defined by the contract set out in the bill, defendant shall not by this decree be prevented from purchasing or acquiring such periodic quotations from such Telegraph company.

The cost of the cause is adjudged against defendant, for which execution may issue.

Enter this.

JNO. E. McCALL, *Judge.*

135 In the Circuit Court of the United States for the Western Division of the Western District of Tennessee.

No. 601.

NEW YORK COTTON EXCHANGE
vs.
CLARENCE P. HUNT.

Agreement of Counsel for Defendant.

Filed April 4, 1906. Dan F. Elliotte, Clerk.

In order to expedite the final determination of this cause, counsel for the respective parties have entered into an agreement that they will prepare the record for a final decree in the cause, so that an appeal may be taken by the defendant to the Supreme Court of the United States:

Now, in consideration of the above agreement, counsel representing the defendant in this cause, agree that if the Court shall enter the decree in the Circuit Court agreed upon by counsel.

That they will file with the Clerk of the Supreme Court of the United States the record in the cause, together with printing fee, on or before April 20, 1906, and that they will file with the Clerk of the Supreme Court of the United States their brief on or before October 15, 1906, so as to insure a hearing in that Court on oral arguments, if not submitted on briefs, at the next term thereof.

Second, if the injunction granted in the Decree by the Circuit Court is not stayed by order of the Court pending the appeal, either party may move to advance, under Supreme Court Rule No. 32, and the other will not oppose. If injunction be stayed, appellant will not oppose the motion to advance if made by appellee.

Third, That no steps will be taken int the suit of C. P. Hunt, *et al. v.* Western Union Telegraph Company, pending in the Chancery Cour- of Shelby County, Tennessee, pending the Appeal to the Supreme Court of the United States, and if the Supreme Court of the United States shall affirm the decree of the Circuit Court, the said proceedings in the State Court aforesaid will be dismissed

136 at the cost of Complainants.

This April 4th, 1906.

WILLIAM H. CARROLL,
Counsel for Defendant.

137 In the Circuit Court of the United States for the Western Division of the Western District of Tennessee.

No. 601.

NEW YORK COTTON EXCHANGE
vs.
CLARENCE P. HUNT.

Agreement of Counsel as to Certain Facts.

Filed April 4, 1906. Dan F. Elliotte, Clerk.

It is hereby Stipulated For the purpose of hearing of the above entitled cause, and for no other purpose whatever, that:

1. Paragraphs I, II, III down and including the words "by open *viva voce* bidding," IV, VI, VII, VIII and IX, of the bill filed herein are true.

2. That the affidavits of W. J. Dealy and John Costelloe, heretofore filed herein, shall be deemed depositions in this cause with the same effect as if the matters therein recited had been incorporated into depositions of the parties respectively making such affidavits, formally taken in this cause.

HENRY CRAFT,
Counsel for Complainant.
W. H. CARROLL,
Counsel for Defendant.

138 In the Circuit Court of the United States for the Western Division of the Western District of Tennessee.

No. 601.

NEW YORK COTTON EXCHANGE
vs.
CLARENCE P. HUNT.

Petition of Clarence P. Hunt, for an Appeal and a Suspension of the Injunction Herein Pending said Appeal.

Filed April 4, 1906. Dan F. Elliotte, Clerk.

To the Honorable the Judges of the Circuit Court of the United States Sixth Circuit:

Your petitioner, Clarence P. Hunt, respectfully states and shows that he is aggrieved by reason of the entry of a final decree herein, perpetually enjoining him from the use of the "ticker" mentioned and described in the pleadings, and adjudging costs against him; and he is also aggrieved at the judgment of this Court, wherein;

it held that the matter or sum in controversy was $2000.00 exclusive of interest and costs, and that it had jurisdiction to award the writ of injunction herein; and he avers that this Court having adjudged the said issues in favor of the plaintiff herein, to expedite the decision upon the merits of the controversy, a final decree was passed herein, wherein he was perpetually enjoined as set forth in the decree, from having the use of the said "ticker" and the decree of this Court was to operate as a final and conclusive adjudication of the case now pending in the Chancery Court of Shelby County Tennessee, wherein this petitioner was the plaintiff and the Western Union Telegraph Company the defendant, and which said cause is referred to in the pleadings.

This petitioner avers that the same "ticker" that registers automatically the market quotations or reports gathered on the floor of the plaintiff's Exchange, also registers the Liverpool, New Orleans, Norfolk, Savannah, Charleston, Mobile Galveston, Housto- Montgomery, St. Louis and many other market reports of cotton,
139 and that if said "tickers" is to be removed from his office, it will not only deprive him of the use of the market reports gathered on the New York Cotton Exchange, but of all of the market reports from the other cotton markets cited above. That the "ticker" also registers the receipts of stocks of cotton the world's visible supply, the amount coming in sight weekly, and many other valuable statistics not readily obtainable without the use of the said "ticker." That the injunction process of this Court, operating as the decree directs its shall operate, will be to deprive this petitioner, not only of the market reports referred to, but other valuable statistics and petitioner shows to the Court that no complaint is made of his having the use of the various other market quotations by the Exchanges of the various Cities, and he submits that now, for nearly three years, under the injunction process issuing out of the State Courts, he has had the benefit of the market quotations gathered on the Exchange of the plaintiff, and he has paid therefor the agreed price to the vendee of the plaintiff, and yet, it appeared by the evidence that he had made no improper use thereof, but on the contrary, the market value of said reports had not been by his use of them, impaired at all.

Wherefore the petitioner prays that your Honor will exercise your discretion and suspend the operation of the said injunction, conformably to the rule of the Supreme Court of the United States, it being Rule 93, and your Honor will allow him an appeal to the Supreme Court of the United States, from the judgments and decrees of your Honor, wherein your Honor held that you had jurisdiction of this controversy, and jurisdiction to award a writ of injunction herein, and to pronounce a final decree.

T. B. TURLEY AND
WILLIAM H. CARROLL,
Counsellors for C. P. Hunt.

STATE OF TENNESSEE, *County of Shelby:*

Personally appeared before me Clarence P. Hunt, who being duly sworn made oath that the facts stated in the foregoing petition are true to the best of his knowledge, information and belief.

C. P. HUNT.

Sworn to and subscribed before me this April 3, 1906.

[NOTARIAL SEAL.] GEO. W. GLASCOCK,
Notary Public.

140 The prayer of Petitioner allowed upon Defendant executing bond in sum of One thousand ($1000.00) dollars conditioned as the law directs.

JNO. E. McCALL, *Judge.*

141 In the Circuit Court of the United States for the Western Division of the Western District of Tennessee.

No. 601. Equity.

NEW YORK COTTON EXCHANGE
vs.
CLARENCE P. HUNT.

Assignment of Errors.

Filed April 4th, 1906. Dan F. Elliotte, Clerk.

I.

To the judgment and decree of the Court below, wherein it held that the matter or sum in controversy, involved the sum of $2,000.00 exclusive of interest and costs.

II.

Wherein it held thereafter, that upon the matters and things set forth, by the plaintiff, it had jurisdiction to grant the injunction in this case, and to pronounce the final decree herein.

T. B. TURLEY AND
W. H. CARROLL,
Counsel for Appellant.

142 UNITED STATES OF AMERICA,
Western Division of the Western District of Tennessee:

In the Circuit Court of the United States Within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit Thereof.

Proceedings had in said Court at a regular term thereof, begun and held for its November Term, A. D. 1905, at the United States

Court House in the City of Memphis, in said District, on to-wit: the 4th, day of April, A. D. 1906, in the following cause, to-wit:

No. 601.

NEW YORK COTTON EXCHANGE
vs.
CLARENCE P. HUNT.

This cause came on to be heard upon motion of the defendant for an order granting him an appeal to the Supreme Court of the United States from the decree entered in this cause on the 4th, day of April 1906, and from such other orders and decrees as have been entered in the cause, to the extent that they may hold that the Court had jurisdiction of the controversy presented in this cause, and jurisdiction to grant the Writ of Injunction ordered; and also for an order staying the issuance of the writ of injunction pending such appeal.

Whereupon it is ordered and decreed that the defendant C. P. Hunt, be and he is now hereby granted an appeal as prayed, upon executing a good sufficient appeal bond in the penalty of one thousand dollars ($1000.00) as conditioned by law.

Pending such an appeal the writ of injunction heretofore ordered to issue in this cause will be stayed, upon condition however that the appeal be perfected and the record filed by appellant to the October Term of the Supreme Court of the United States, next ensuing.

143 In the Circuit Court of the United States for the Western Division of the Western District of Tennessee.

No. 601.

NEW YORK COTTON EXCHANGE
vs.
CLARENCE P. HUNT.

Appeal Bond.

Filed May 18, 1906. Dan F. Elliotte, Clerk.

Know all men by these presents, That we, Clarence P. Hunt, as principal, and Leon Hunt, T. J. Hunt, and William H. Carroll, as sureties, are held and firmly bound unto the New York Cotton Exchange, in the full and just sum of One thousand ($1,000.00) Dollars to be paid to the said New York Cotton Exchange, certain attorneys, executors administrators or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 18th day of May, A. D. 1906.

Whereas, lately at a Circuit Court of the United States for the Western District of Tennessee, in a suit depending in said Court,

between the New York Stock Exchange, as complainant and Clarence P. Hunt as Respondent, wherein a decree was rendered against the said Clarence P. Hunt, and the said Clarence P. Hunt having obtained an Appeal and a stay of the injunction granted therein, and filed a copy thereof in the Clerk's office of the said Court to reverse the Decree in the aforesaid suit, and a citation directed to the said New York Cotton Exchange citing and admonishing it to be and appear at a Supreme Court of the United States, to be holden at the City of Washington, in the District of Columbia, on the Second Monday in October, (8th), A. D. 1906.

Now the condition of the above obligation is such, That if the said Clarence P. Hunt, shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

144

CLARENCE P. HUNT. [SEAL.]
LEON HUNT. [SEAL.]
T. J. HUNT. [SEAL.]
W. H. CARROLL. [SEAL.]

Sealed and delivered in the presence of—
DAN F. ELLIOTTE.
C. HARLAN ELLIOTTE.

Approved by—
JNO. E. McCALL, *Judge.*

145 UNITED STATES OF AMERICA:

The President of the United States to the New York Cotton Exchange, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at the City of Washington, in the District of Columbia, on the second Monday in October A. D. 1906, pursuant to an Order allowing an Appeal entered in the clerk's office of the Circuit Court of the United States, for the Western Division of the Western District of Tennessee, in a certain action numbered 601, wherein Clarence P. Hunt is respondent and appellant and you are complainant and appellee, to show cause, if any there be, why the decree rendered against the said respondent and appellant, as in the said order allowing an appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this the 18th, day of May, A. D. 1906, and of the Independence of the United States the one hundred and thirtieth year.

[Seal of the Circuit Court of the United States for the District of West Tennessee.]

JNO. E. McCALL,
United States District Judge,
Presiding in the Circuit Court.

Acknowledgment of Service.

The New York Cotton Exchange, hereby acknowledge due and legal service of the above Citation and receipt of a copy thereof, this 21st day of May, A. D. 1906.

NEW YORK COTTON EXCHANGE,
By HENRY CRAFT,
Solicitor for Said Appellee and Complainant in Lower Court.

146 THE UNITED STATES OF AMERICA,
Sixth Judicial Circuit, Western District of Tennessee:

I, Dan F. Elliotte, Clerk of the Circuit Court of the United States, for the Western Division of said Western District of Tennessee, do hereby certify that the papers hereto attached, are full, true, perfect and correct copies of the originals and of the entire record and proceedings (including the original Citation and Service therein) in said Court as the same now appears of record and upon the files in my office, in the following cause, to-wit:

No. 601.

NEW YORK COTTON EXCHANGE
vs.
CLARENCE P. HUNT.

In Testimony Whereof, I have hereunto written my name and affixed the Seal of said Court, at my office in the City of Memphis Tennessee, this 18th day of May A. D. 1906 and of the Independence of the United States the 130th Year.

[Seal of the Circuit Court of the United States for the District of West Tennessee.]

DAN F. ELLIOTTE, *Clerk.*

Authentication.

I, Jno. E. McCall, a Judge of said Court, do hereby certify that Dan F. Elliotte, whose genuine signature appears to the foregoing certificate is, and was at the date of the same, Clerk of said Court, and that his attestation is in due form.

JNO. E. McCALL,
Judge of the District Courts of the United States for the District Aforesaid.

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147 NOTE BY THE CLERK:

Here follow "Charter, By-Laws and Rules of the New York Cotton Exchange, June 1904, Sixteenth Edition," being a printed book, copies of which will be furnished to the Court.

Endorsed on cover: File No. 20,279. W. Tennessee C. C. U. S. Term No. 314. Clarence P. Hunt, appellant, *vs.* The New York Cotton Exchange. Filed June 6th, 1906. File No. 20,279.

Clearing Comparison Slip.

New York, ...1

M.....

WE CLAIM FROM YOU

on the following contracts for the future delivery of Cotton, to be adjusted through the Clearing House.

Date.	Bought of you.	Sold to you.	Month.	Price.	Settlement Price.	Difference.
				Amount due		

(*Signed*)

These comparison slips will be distributed in locker boxes, from which they may be obtained fifteen minutes later by the parties to whom they are addressed.

Sec. G. It shall further be the duty of each person or firm making settlements as above, to send to the Clearing House bank a detailed report on a form prescribed by the Committee on Clearings ("clearance sheet"). This clearance sheet shall show the net balances due by each person or firm making the report to other members of the Exchange or from other members of the Exchange to such person or firm, arising from settlements as ascertained by exchange of comparison slips, as provided in this Rule. Such clearance sheet must be filed at the bank by twelve o'clock noon of each business day, except Saturday, when it must be filed by eleven fifteen o'clock A. M.

Sec. H. Parties whose clearance sheet shows a net balance against them shall accompany the same with a certified check for said

(Page 124)

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ADOPTED TO GO INTO EFFECT MARCH 20TH, 1906.

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out from the first line of Sub section H of Rule 7 the words "sheet

drawn

and substitute therefor the words "sheets show." Strike out from the

such ch

e the word "sheet" and substitute therefor the word "sheets."

by the bank by two o'clock P. M. of the same day, except Saturday, when the check shall be returned by twelve o'clock noon.

Sec. I. The comparison slips of amounts due shall, after having been cleared, be receipted and returned through the locker boxes. If required, the Clearing House bank will stamp such comparison slips as having been paid through the Clearing House.

Sec. J. When parties have called for margin after twelve o'clock noon or before ten thirty o'clock A. M. on Saturday to be deposited by other parties to whom they owe a net balance in their clearance sheet for the day on which the margin should be deposited, and such call has not been responded to by eleven thirty o'clock A. M. of each business day except Saturday, when the hour shall be eleven o'clock A. M., they may omit such net balance

from their clearance sheet, but must append thereto a memorandum specifying the items so omitted, for the information of the bank.

Sec. K. If one party claims from another party an amount in excess of that allowed to him on the clearance sheet of the other party, the claimant must, on notice thereof, immediately pay the difference to the bank. In case one party allows another party on his clearance sheet an amount in excess of that claimed by him, the excess shall be refunded by the bank to the first party.

Sec. L. In case any party fails to have his clearance sheet and check, as provided in this Rule, lodged in the Clearing House bank by twelve o'clock noon of each business day, except Saturday, when it shall be in the Clearing House by eleven fifteen o'clock A. M., he shall be fined five dollars, and if not in by one o'clock P. M. of each business day, with the exception of Saturday, and if not in by eleven thirty o'clock A. M. on Saturdays, upon advice of that fact being received from the Clearing House bank, the Committee on Clearings shall order his name posted upon the bulletin of the Exchange as not having gone through the Clearing House.

Sec. M. When parties are posted as provided herein all their items sent in for clearing shall be struck out from the sheet, and members must adjust their sheets by immediate payment to the bank of the sums claimed as due them from said delinquent, and the bank shall refund to the various parties in interest the amounts which they have allowed said delinquents in their sheet.

Rule 8. Where notice of delivery by the seller is required by a contract, it shall be given to the buyer before the opening of the Exchange on the third day prior to the day of delivery, except when delivery is to be made upon the last day of the month, in which case notice of delivery shall be given by the seller

before eleven o'clock A. M. on the previous business day; provided, that when the day as herein provided for the issuing of the notice of delivery falls on a Saturday or a holiday, the next preceding full business day shall be substituted therefor and no notice making Saturday the day of delivery shall be issued.

The party receiving the notice may transfer the same to another party and it may be given from one transferee to another. Every party receiving the notice shall endorse upon it the time of receipt. Every transfer must be made promptly within fifteen minutes after the time of receipt, and any party who fails to forward such notice within that time shall be liable to a penalty of *twenty-five one hundredths of one cent* per pound or to have the notice returned to him, at the option of the party with whom the notice lodges at the close of the day.

All transfers must be made within Exchange hours and the notice shall become a short notice at the close of the Exchange on the day of its issue, or when held by any party for a longer time than the time allowed for transfer; provided, that in the case of a notice issued for delivery on the last day of the month, transfers thereof may be made till one-half hour after the close of the Exchange on the day of issue, at which time the notice shall become a short notice.

Should the office of the party to whom a notice is to be given be closed, it shall be good service to give the notice to the Superintendent of the Exchange. He shall endorse thereon the day and time of its receipt and post notice thereof on the bulletin of the Exchange.

Every notice shall be for fifty thousand pounds of cotton and shall be in form as follows:

TRANSFERABLE NOTICE.

NEW YORK, (*March 4th, 1901.*)

(*9.59*) o'clock.

To (*H. Bros. & Co.*)

Take notice that on (*March 7th, 1901*) we shall deliver you 50,000 pounds in about 100 square bales of cotton, in accordance with the terms of our contract sale to you.

We pledge ourselves to deliver, before 2 P. M. on the day specified for delivery, to the last holder hereof, a warehouse receipt or receipts, and either at the same time or as soon thereafter as practicable, an Inspector's certificate or certificates of grade, upon written notice by the last holder of this notice of the holding of the same to us, not later than 4 P. M. on the day previous to the one herein specified for delivery of the cotton.

This notice is to be delivered to us simultaneously with our delivery of the warehouse receipt or receipts to the holder thereof.

Signed (*L. Bros.*)

per

CONDITIONS.

In consideration of one dollar paid to each of the acceptors, the receipt of which is hereby acknowledged, it is agreed that the last acceptor hereof will before 4 P. M. on the (*6th*) day of (*March*) give written notice of the holding of this notice to (*L. Bros.*) and before 2 P. M. on the (*7th*) day of (*March*) receive from (*L. Bros.*) a warehouse receipt or receipts (and either at the same time or as soon thereafter as practicable an Inspector's certificate or certificates of grade) for about 100 square bales of cotton and pay them the full amount of (*8.50*) cents per pound therefor, settling with them on the basis of Middling, with allowances for variations in grade in accordance with the quotations of the New York Cotton Exchange existing on the day previous to the date of this notice. It is further agreed that each acceptor

hereof shall continue his (or their) liability to each other for the fulfillment of the contract until this notice shall have been returned to (*L. Bros.*) and a warehouse receipt or receipts for the cotton to be delivered, received by the last acceptor hereof from (*L. Bros.*), at which time all responsibilities of intermediate parties shall cease.

Signed (*H. Bros. & Co.*)
per

FORM OF TRANSFER.

NEW YORK, (*March 4th, 1901.*)

Time Received	Accepted by	Transferred to
(*10.07 A. M.*)	(*H. Bros. & Co.*) *per*	(*G. & Co.*)

Such notice, if issued and tendered as herein provided, shall be accepted by any member of the Exchange on any contract for future delivery of cotton.

Such notice may be transferred as short notice at any time previous to the day specified for delivery of the cotton, but only in fulfillment of a contract made as "short notice."

The differences between the price of every contract on which such notice is tendered and the price at which the notice is issued shall be paid as provided in Rule 7.

The failure on the part of the holder of any notice to duly notify the drawer thereof, as provided therein, shall subject him to a penalty of one hundred and twenty-five dollars for each notice, to be paid to the drawer thereof, the contract to remain in full force.

The Superintendent of the Exchange shall at the close of each day post upon the bulletin of the Exchange the price at which transferable notices shall be issued on the following day. The price so posted shall be within *twenty-five one hundredths of one cent* per pound of the closing price for like deliveries.

RULE 9. All trading in the current month shall cease at noon on the last full business day of the month. Transferable notices may be issued on that day either in fulfillment of trades made on that day, in which case the notice shall be issued within ten minutes after the time of the trade, or in fulfillment of trades made on a Saturday immediately preceding, in which case the notice shall be issued before the opening of the Exchange. The delivery of cotton on all notices issued on this day shall take place on the first day of the following month, as provided in Section 101 of the By-Laws. Transferable notices may also be issued in fulfillment of trades made after eleven o'clock A. M. on the next preceding full business day, in which case the notice shall be issued within ten minutes after the time of the trade. Every transfer of a notice issued under this Rule shall be made within ten minutes of the time of receipt.

Every notice issued under this Rule shall be accepted in fulfillment of any contract for future delivery.

Except as herein provided, all provisions of Rule 8 in regard to transferable notices shall apply to notices issued under this Rule.

All transferable notices on which warehouse receipts and Inspector's certificates of grade shall not be delivered to the receiver as provided in Section 101 shall be settled at the quotation for spot cotton of the day the cotton is due, with the addition of *twenty-five one hundredths of one cent* per pound against the defaulting party; provided, however, that no defaulting party can claim settlement under this Rule except upon evidence that the default was unintentional and not premeditated. Nothing, however, in

this Rule shall be considered to prevent a settlement by mutual consent.

RULE 10. No principal, either by himself or through any sampler, clerk or any other agent, shall be allowed to interfere by word or deed, directly or indirectly, with the inspection of cotton. In case of such interference the inspection of the cotton shall be at once stopped, and the party ordering the inspection shall pay the necessary expenses incurred by the Inspector by reason of his order.

When samples of inspected cotton have become lost or destroyed, it shall be the privilege of the owner of the cotton to have the same resampled at his own expense under the direction of the Inspector-in-Chief, having first delivered to the Inspector-in-Chief the storage receipt, upon which shall be stamped the weight of such re-drawn samples. This weight shall be deducted from the original weight stamped thereon.

On samples not retained by the Inspector-in-Chief, if not withdrawn within one week after issuance of certificate of grade, a storage charge shall be made of one cent per sample per month or any part of a month.

RULE 11. False or fraudulently packed cotton is defined as follows: Such bales as may contain any foreign substance, water-packed bales, or bales containing damaged cotton in the interior without any indication of such damage upon the exterior of the bale; also such bales as are plated or composed of good cotton upon the exterior, and decidedly inferior cotton in the interior of the bales in such manner as not to be detected without opening or boring the bales.

Fraudulently packed cotton and bales which have in them over five pounds of sand, seed or gin-fall, shall be rejected and not be deliverable upon a spot sale, nor accepted by the Inspectors in examining and sampling inspected cotton. When mixed-packed

ADOPTED TO GO INTO EFFECT APRIL 17TH, 1905.

Strike out the third paragraph of Rule 12, *and substitute the following therefor:*

On uncompressed and compressed bales necessary bagging is understood to be bagging weighing not over two and one-quarter pounds to the yard, absolutely essential to cover and protect the contents of the bale in proper condition, not lapping over five inches in any place, including patches; provided side-pieces of single half-widths of bagging running the full length of compressed bales, put on before compressing, shall not be considered unnecessary.

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cotton is in a bale, the whole bale shall be deemed of the grade of the poorest quality, and if that is below the lowest grade called for in the contract, or shown in the samples at the time of sale, it shall not be deliverable or inspected.

In the event of a disagreement as to the quantity of sand, seed, or gin-fall in any bale or bales, either party, in case of a spot sale, or, in the case of inspected cotton, either the Inspector-in-Chief or the owner of the cotton, may require any such bale or bales to be opened and the actual quantity of sand, seed, or gin-fall ascertained, all expense and loss incident thereto to be paid by the party in error.

The full weight of sand, seed, or gin-fall decided to be in any bale shall be deducted by the Weighmaster.

Gin-cut cotton, where the extent of gin-cutting is such as to reduce the value of the cotton more than one-half a grade below what it otherwise would be, shall be considered as unmerchantable and shall not be accepted by Inspectors in examining and sampling inspected cotton.

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ADOPTED TO GO INTO EFFECT MARCH 12TH, 1906.

Strike out *Rule* 12, *and substitute therefor :*

Six iron bands or ropes on uncompressed bales, or a reasonable number bands or ties on compressed bales not exceeding in weight ten pounds the aggregate, shall be sufficient for each bale of cotton.

All unnecessary bagging shall be removed from the bales before they weighed, or a fair and equitable deduction made for the weight of same. ecessary bagging shall be understood to mean all bagging not abso- ly essential to cover and protect the contents of the bales in a proper ner while in an uncompressed state.

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The tare on a bale of cotton shall not exceed an average of twenty-eight nds including bands and bagging.

In the event of a disagreement as to the quantity of bagging on any or bales of cotton submitted for inspection, the Inspector-in-Chief may uire such bale or bales (not exceeding ten per cent. of the lot) to be ped in order to ascertain the tare, which shall be considered the aver- tare on the lot inspected All expense and loss incident thereto to be by the party in error.

cotton is in a bale, the whole bale shall be deemed of the grade of the poorest quality, and if that is below the lowest grade called for in the contract, or shown in the samples at the time of sale, it shall not be deliverable or inspected.

In the event of a disagreement as to the quantity of sand, seed, or gin-fall in any bale or bales, either party, in case of a spot sale, or, in the case of inspected cotton, either the Inspector-in-Chief or the owner of the cotton, may require any such bale or bales to be opened and the actual quantity of sand, seed, or gin-fall ascertained, all expense and loss incident thereto to be paid by the party in error.

The full weight of sand, seed, or gin-fall decided to be in any bale shall be deducted by the Weighmaster.

Gin-cut cotton, where the extent of gin-cutting is such as to reduce the value of the cotton more than one-half a grade below what it otherwise would be, shall be considered as unmerchantable and shall not be accepted by Inspectors in examining and sampling inspected cotton.

RULE 12. Six iron bands or ropes on uncompressed bales, or a reasonable number of bands or ties on compressed bales, not exceeding in weight ten pounds in the aggregate, shall be considered sufficient for each bale of cotton. Any excess shall be deducted from its gross weight.

All unnecessary bagging shall be removed from the bales before they are weighed, or a fair and equitable deduction made for the weight of same.

The usual side-pieces shall not be considered unnecessary bagging (side-pieces should each consist of no more than a single half-width of bagging running the whole length of the bale), nor shall three full widths of bagging be considered unnecessary, provided they only run the length of the bale, the heads

being protected by head-pieces of a single thickness of cloth; but three full widths of bagging, lapping each other at the heads, shall subject the bale to a deduction of two pounds. Unnecessary bagging shall be understood to mean all bagging not absolutely essential to cover and protect the contents of the bale in a proper manner while in an uncompressed condition.

RULE 13. No bale of cotton weighing less than three hundred pounds shall be deemed merchantable, and any buyer may refuse to receive the same.

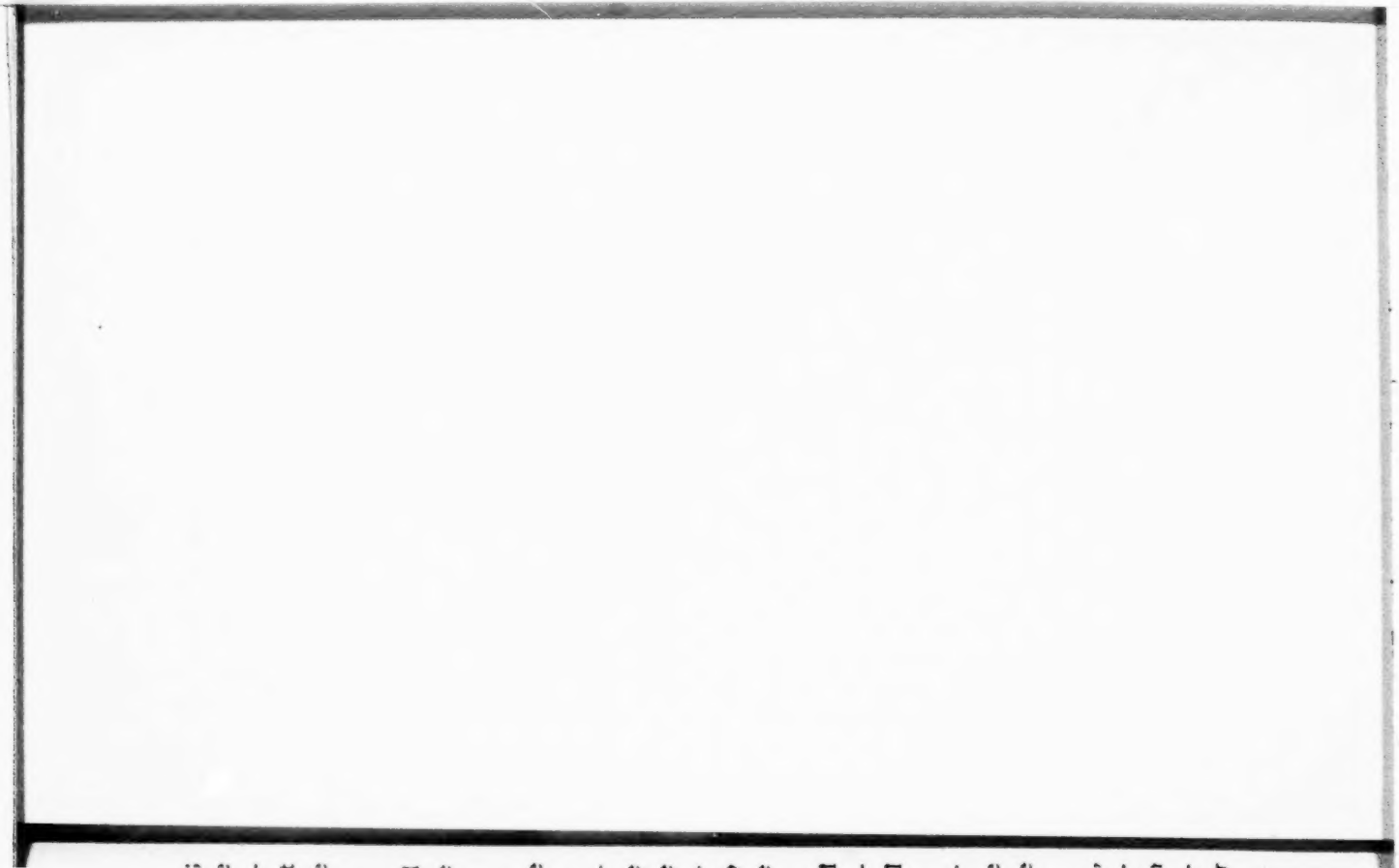
RULE 14. All cotton shall be received within ten days of date of purchase.

The day on which the cotton is due the delivery shall not be required to commence before eight o'clock A. M., nor to continue later than sunset. Cotton shall be delivered or received at the rate of not less than twenty bales per hour from each scale when required by buyer or seller. When the seller requires the buyer to receive cotton from two scales at one place of delivery on one order, it must be noted on the delivery order.

The cotton shall be at the risk of the buyer after it has passed the scale in course of delivery, except where payment upon delivery is exacted, in which case no risk is to attach to the buyer until the delivery and payment are consummated.

Nothing in this Rule in reference to the liability of either buyer or seller, before or after the cotton has passed the scales of the weigher, shall be construed as preventing an agreement to the contrary, if the same is made in writing.

If the weather be deemed unsuitable for the delivery of cotton, by any party interested in a delivery, on any day, the Superintendent of the Exchange, at his request, shall obtain the opinion thereon of three members of the Exchange (not interested in deliveries on that day), and if a majority decide that the weather



ADOPTED TO GO INTO EFFECT MARCH 20TH, 1906.

33 *Insert the word "On" as the first word of the first line of the second paragr*
of Rule 14.

be unsuitable for the delivery of cotton, the Superintendent shall post their certificate on the bulletin of the Exchange, dating the time of posting, which shall remain posted until a majority of said three members shall decide the weather to be suitable, when it shall be taken from the bulletin and filed, noting the time of removal. During the time such certificate is posted on the bulletin all deliveries of cotton may be suspended, at the option of either party to any delivery; and any delivery suspended under this Rule shall be entitled to an extension of time—two hours more than the time such certificate was posted. The Superintendent shall give a certified copy of said certificate to any member requiring it, on the receipt of fifty cents, and such copy shall be a sufficient authority for the suspension and resumption of delivery of any lot of cotton by the parties to the delivery.

This Rule shall apply only to deliveries other than upon contract for future delivery.

RULE 15. In classing white cotton, the following grades are to be used: Full grades, Fair, Middling Fair, Good Middling, Middling, Low Middling, and Good Ordinary. Half grades, Strict Middling Fair, Strict Good Middling, Strict Middling, Strict Low Middling, and Strict Good Ordinary. Quarter grades, Barely Middling Fair, Fully Good Middling, Barely Good Middling, Fully Low Middling, Barely Low Middling, and Fully Good Ordinary.

In classing tinged cotton, the following grades are to be used: Strict Good Middling Tinged, Good Middling Tinged, Strict Middling Tinged, Middling Tinged, Strict Low Middling Tinged, Low Middling Tinged, and Strict Good Ordinary Tinged.

In classing stained cotton, the following grades are to be used: Fully Middling Stained, Middling Stained, Barely Middling Stained, Strict Low Middling Stained, Fully Low Middling Stained, and Low Middling Stained.

RULE 16. When cotton of various grades is sold by sample at an average price, and, for proper causes, rejections are made, and such rejected bales are from the grades better than the average, the seller shall make good to the buyer the difference in value; and if the rejections are from grades below the average, the buyer shall make good to the seller the difference.

RULE 17. The following shall be the contract in all cases for cotton to arrive, where no other form of contract is specified at the time of sale:

FORM OF CONTRACT.

NEW YORK, ...1

SOLD for M.....

To M.....

Bales Cotton to arrive, to be taken from a licensed warehouse or warehouses by the buyer, after having been weighed by seller, upon any day (Sundays and legal holidays excepted), if notified by the seller before three o'clock P. M., provided the whole lot, or as much as twenty-five bales are ready for delivery. It is mutually agreed by both parties that if the cotton covered by this contract should arrive in more than one parcel, each shall constitute a separate lot, for which a distinct bill shall be rendered, and, if desired, an independent arbitration.

In the event of the loss, from any cause, of the cotton named in the contract, said contract shall be canceled without prejudice to either party; but if the loss is only partial, the contract shall remain in full force and effect, to the extent of such portion as

ADOPTED TO GO INTO EFFECT MARCH 20TH, 1906.

34

Strike out from the fourth line of the third paragraph of Rule 18 *the words* "Committee on Classification" *and substitute therefor the words* "Classification Committee."

may be saved and arrive consigned to and under the control of the seller; provided it arrives in merchantable order, or may be put into such condition, in the opinion of three competent and disinterested parties, without an undue sacrifice upon the part of the seller.

Nothing in this Rule shall be construed to apply to cotton sold to arrive within a stipulated period of time, provided such period of time has expired.

RULE 18. After cotton has been examined, received, and passed upon by the broker or agent of the buyer, no claim shall be made against the seller except for fraudulent packing. When a claim is made it shall be in writing and shall state the particulars of the fraudulent packing, the marks by which the cotton was sold, and all other legible marks and numbers. It shall also state the loss sustained by reason of the fraud; such loss being based upon the difference in market value at the date of its discovery, between such bale and a bale of cotton of a similar grade, sound and in good condition. Such difference in value shall constitute the claim, regardless of the original cost of the cotton, or of any fluctuations in the market of the prices of cotton.

Any claim made in accordance with the above, and verified by oath or affirmation, shall be deemed, *prima facie*, valid in favor of the claimant, and it can only be defeated by the decision of an arbitration, or the Board of Appeals.

Provided, that in all cases of claims for fraudulent packing, the party making the claim shall have the right to return, or the seller to demand the return, of such bale or bales. If, upon examination by the Committee on Classification, it be ascertained that such claim is well founded, the seller shall receive back the cotton, paying cost of transportation, both from and returning to New York, and shall deliver other bales of the grade originally sold, and, as nearly as practicable, to the same aggregate weight

of cotton; the settlement of differences to be based upon the quotations for similar grade on the day on which the discovery of the fraud is made: in all other cases, the settlements to be made as provided for above. Any claims of this nature shall be good, against all sellers, for twelve months from date of sale, provided that due notice of the existence of fraudulent packing be forwarded to them within eight days of its discovery, and the date of such discovery of fraud shall be incorporated in the sworn or affirmed certificate.

RULE 19. Transit cotton, when offered for sale, should be accompanied by a memorandum giving the name of the vessel, ports of loading and destination, rate of freight, where insured, rate of insurance, marks and quantity of each mark, and total weight when known.

If the amount of insurance is not stated, the buyer shall consider, and the seller shall guarantee, the cotton insured for not less than the price at which it may have been sold. The seller shall cause additional insurance to be made when so requested in writing, and in the event of loss or damage before the time named in the contract for delivery of the documents, the cotton shall be considered the property of the buyer, who must pay for the same promptly on presentation of shipping documents as specified in the contract, the seller then transferring the insurance to the buyer, who shall accept the responsibility of the underwriters from time of purchase.

If the buyer does not pay for the cotton at the time named in the contract, the seller shall have the option to make other disposition of the same, holding the buyer responsible for any loss he may sustain.

In case of the arrival of the cotton at the port of destination before the seller shall have delivered the shipping documents to the buyer, the landing expenses incurred at said port are to be

borne by the purchaser, but it shall be the duty of the seller, at the time of sale, to state (when within his knowledge) if the cotton has sailed from port or ports of loading, or arrived at port or ports of destination, or if any accident has occurred to vessel or cargo; failing to do so, he shall become responsible for all such proper expenses as may be incurred by reason of such neglect on his part; and for neglecting to give such information, the buyer shall have the option of canceling the contract before the documents are delivered.

The seller shall guarantee the correctness of the samples shown, and it shall be the duty of the broker to seal them promptly, and they are only to be opened for comparison with samples to be drawn at the port of destination, under the inspection of referees, whose names shall be specified in the contract, and whose decision shall be final; all claims for difference shall be void if the samples are opened without the consent of seller or seller's referees.

Unsealed samples shall not be removed from the office of the broker in the original sale, for re-sale through another broker or otherwise, without consent of the seller.

All claims for difference in samples, if accompanied by proper vouchers, must be paid by seller within three days from presentation.

A bill or invoice for the cotton must be rendered to the buyer as soon as practicable after sale, accompanied by a sworn or licensed weigher's certificate of weights, and shall be paid for within seven days after sale, on delivery of shipping documents.

Free on board sales shall be subject to the same terms and conditions of marine insurance and guaranty of samples which attach to cotton sold in transit.

Settlements for difference in grades shall be determined by the quotations of the New York Cotton Exchange on the day the bill of lading is dated, which must be mailed not later than

two days after its date; payment shall be made on presentation of the shipping documents, upon receiving one day's notice, unless otherwise agreed upon at the time of sale.

When sales are made for specified grade, or by type samples, the buyer shall have the right to reject any bales that fall off in grade more than half a grade below the grade sold; the seller shall replace the bales rejected within a reasonable time, unless the buyer is willing to receive the bales that are not up to the grade sold at an agreed-upon allowance.

When the difference in the value of cotton falls within half a grade of a specified grade, the difference in the value of the cotton tendered shall be adjusted according to the quotations ruling in New York on the day of the sale.

When claims are presented for so-called "country damage" the certificate of the weigher or shipping clerk at the time of shipment, corroborated by the bills of lading, shall be taken as *prima facie* evidence of the condition of the cotton. Failure to obtain remedy from the vessel for delivery at port of destination in improper condition as to exterior of the package shall not invalidate the original evidence.

Whenever cotton is sold for ship or ships, or for shipment before a specified date, the name of the ship or ships, and the marks of the cotton, if not previously declared, shall be given in writing by the seller to the buyer before twelve o'clock noon of the tenth day after the day or month named in the contract; or, if more than one month is named, then after the actual month of shipment.

The term ship or ships includes steamer or steamers.

RULE 20. The following rates of brokerage shall govern all transactions between members, unless otherwise expressly stipulated: Upon all sales of Spot Cotton, to arrive, transits and free on boards, twenty-five cents per bale shall be paid by both buyer

ADOPTED TO GO INTO EFFECT FEBRUARY 5TH, 1906.

17

Strike out from the fourth and seventh lines of the first paragraph of Rule the *word* "average."

Strike out from the sixth and eighth lines of the second paragraph of Rule the *words* "one thirty" *and substitute therefor the words* "two thirty."

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(Page 139)

ADOPTED TO GO INTO EFFECT JANUARY 18TH, 1906.

Strike out from the fifth line of the third paragraph of Rule 21 *the word* "two" *and substitute therefor the words* "two thirty."

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and seller, which shall cover the charge for broker's service in attending to receipt and delivery of the same.

RULE 21. When no sales for any month are reported at the Exchange, the Committee on Futures shall fix the quotations for such month, if required. When there are no sales, or when they are very few, for any month, the Committee, in fixing the average price of said month for settlements, shall take into consideration the fluctuations during the day in other months, and make the average price in accordance with and relatively the same.

The Secretary of the Warehouse and Delivery Committee shall each day ascertain the total sales of spot cotton, cotton to arrive, or deliveries of cotton that are made on time sales, or cotton which may be shipped out from their own stocks by the owners thereof, and shall send to the Superintendent daily a list of such sales on all days for the previous twenty-four hours, at one thirty o'clock P. M., except Saturdays, and on Saturdays at a quarter before twelve o'clock noon, the amount since the one thirty o'clock P. M. report of the day before.

He shall also ascertain by his returns on each Monday morning the sales of spot cotton, cotton to arrive and deliveries on time sales and outgoings from individual stocks which have not already been reported, and shall report the same to the Superintendent at two o'clock P. M. on Monday, or on the first business day of each week. This cotton shall be considered as sales either for export or consumption, and shall be included in the report of sales for that day and also published in the daily circular.

RULE 22. On the death of a member of the Exchange the Superintendent shall cause the flag of the Exchange to be placed at half-mast, and an obituary notice, with a statement of the time and place of funeral, to be posted on the bulletin board.

The Main or Committee Rooms of the Exchange shall be

granted by the Superintendent, on request of six members, for the purpose of holding meetings to express respect for a deceased member, such meetings to be organized and conducted by the members present. Any meeting in the Main Room for the purpose named in this Rule must be held after business hours.

RULE 23. Betting, or offering to bet, on the floor or in any place or room of the Exchange, or presenting offers of others to bet, is prohibited, and the party or parties offending shall be subject to a fine in the discretion of the Floor Committee, or may, on complaint to the Supervisory Committee, be suspended by the Board of Managers.

RULE 24. Smoking on the floor of the Exchange from nine o'clock A. M. until the official closing of the Exchange is prohibited, and any party violating this Rule shall be subject to a fine in the discretion of the Floor Committee.

RULE 25. All members of the Exchange having partners must file with the Superintendent a memorandum thereof, together with a statement of their place or places of business. Subsequent changes in partnership, including notice of dissolution of or withdrawal from a firm, must be promptly filed with the Superintendent. In the latter case, notice of dissolution or withdrawal shall be posted upon the bulletin for ten days.

RULE 26. Every member of the Exchange must keep a written record of all transactions made by him in cotton—spot, to arrive, free on board, in transit, or for future delivery—showing the dates of such transactions, the name or names of the other party or parties thereto, the quantity bought or sold, and the price thereof.

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In the Supreme Court of the United States

OCTOBER TERM, 1906.

No. 314.

CLARENCE P. HUNT, *Appellant*,

vs.

THE NEW YORK COTTON EXCHANGE, *Appellee*.

Appeal from the Circuit Court of the United States for the Western District of Tennessee.

Argument for Appellant.

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Argument for Appellant.

STATEMENT OF THE CASE.

This injunction bill was filed on the 25th of January, 1906, by the New York Cotton Exchange, a private corporation under the laws of the State of New York, with four hundred and fifty members, owning an exchange building for the exclusive use of its members, and therein conducting, on every business day, cotton sales for present and future delivery, the transactions aggregating many millions of dollars annually, and being exclusively confined to the members of the exchange and gathering during market hours, market prices of such cotton, on the floor of the Exchange, which the appellee sold to telegraph companies to enable those companies to instantaneously receive the market quotations, and to distribute them to their customers throughout the United States, to enjoin appel-

lant from using and receiving market reports. The bill sets forth the manner of collecting and distributing these quotations, the method by which they were gathered and distributed prior to the 14th of July, 1903; the contract between the appellee, the Gold & Stock Telegraph Company under which the Western Union Telegraph Company acquired the right to sell the market quotations to its customers, the price it agreed to pay therefor monthly, the form of application required to be made to the Telegraph Company, for continuous cotton quotations, and thereupon the bill of complaint proceeds as follows:

> VIII. And your orator is informed and believes, and charges the fact to be, that every person now, or since shortly after making of said contracts, receiving said quotations, from either of said companies, had executed and delivered an application subsequently in the form above set out, and such application has, before the delivery of any quotations thereunder, been approved and accepted by your orator, except in a few instances, where persons who were receiving said quotations from the Western Union Telegraph Company prior to the execution of said contracts, have, since the execution of said contracts, secured temporary injunctions in suits brought against said Western Union Telegraph Company (your orator not being made a party to such suits) to enjoin said telegraph company from withholding or withdrawing said quotations from such persons, upon the ground that such persons were not obliged to sign such application for the quotations, nor secure your orator's approval thereof, but were entitled to the quotations without either such application or approval.
>
> IX. That said defendant, Clarence P. Hunt, has never delivered to either of said telegraph companies or your orator any application in the form above described, nor has your orator consented that said defendant should receive its quotations, but that on, to-wit, July 14, 1903, the said Clarence P. Hunt was receiving from said Western Union Telegraph Company said continuous quotations of your orator, and that your orator avers on information and belief, that thereafter said Western Union

Telegraph Company notified said Hunt of the making of said contract between your orator and said telegraph company, and that thereunder said telegraph company would be required to, and would cease furnishing to said Hunt said quotations and such application should have been approved by your orator, as in said contract provided; and that thereupon said Hunt declined and refused to make such application, but in lieu thereof, and on, to-wit, July 31, 1903, said Hunt, with others, filed in the Chancery Court of Shelby County, Tennessee, a petition against said Western Union Telegraph Company, to enjoin it from withdrawing or ceasing to furnish to said petitioner your orator's said quotations; and that thereupon an *ex parte* injunction was issued against said telegraph company as in said petition prayed; that thereafter said company filed its answer to said petition, setting up the said contract with your orator, and denying the right of said petitioner to the relief in said petition prayed, and thereupon, said cause came on for final hearing upon bill and answer, and on —— 190—, a judgment was entered for defendant; whereupon said Hunt and others perfected an appeal from said judgment to the Supreme Court of Tennessee, which on, to-wit, the 15th of June, 1905, reversed said decree without deciding the merits, and for the reason that said Chancery Court should not have disposed of said cause upon bill and answer, but should have awaited the taking of evidence therein, and that said cause is now pending and undisposed of in said Chancery Court, and said injunction is still in force; and that by reason of said injunction, and not otherwise, said Western Union Telegraph Company has been and now is furnishing to said Clarence P. Hunt, and said Hunt has been and now is receiving the continuous quotations of your orator.

X. That such unauthorized receipt and use of said quotations by said defendant is calculated to and in time will, if not entirely stopped, seriously impair the value to your orator of its quotations, and that, if even one person within the jurisdiction of this court be allowed to secure such quotations without the restrictions as to the use thereof which your orator imposes as aforesaid, such person can furnish them to all the bucket-shops and other persons within the United States desiring them, and thus entirely defeat the efforts of your orator to prevent their

use in bucket-shops as a basis of their illegal bets, and materially impair the right of your orator to derive a revenue from the distribution of said quotations.

XI. That your orator is advised by its counsel that there exists no remedy at law adequate to protect Orator's right of property in said quotations against said efforts of said defendant to destroy the same, as actions at law for damages against each person getting said quotations would be impracticable because giving rise to a multiplicity of suits and because the ascertainment of the exact or approximate amount of money damage to your orator would be difficult, if not impossible; and that hence, the only adequate jurisdiction for the protection of your orator's property in such quotations is that of a court of chancery, and the only adequate remedy a writ of injunction issuing therefrom, permanently restraining the said defendant from using or distributing said quotations or receiving the same from either of said telegraph companies until he shall have made application and be further enjoined from receiving said quotations in any other way or from other person or corporation. And your orator further avers that the amount involved and matters in dispute, exclusive of interest and costs, is much more than the sum of $2,000.00.

In tender consideration of which and forasmuch as your orator is remediless in the premises, at and by the strict rules of common law, and is relieved only in a court of equity where matters of this nature are properly cognizable and relievable, and to that end that the said Clarence P. Hunt may true, direct and complete answer make to this bill, but not under oath (answer under oath being hereby waived); and that a temporary injunction may immediately issue, and upon the final hearing hereof be made perpetual, restraining said Clarence P. Hunt, either acting in his or its own behalf, or as a member of any firm, or as an agent or officer of any other person, firm or corporation, and also each and every of the agents, employes and servants of each of said defendant, from receiving, using, selling or distributing, directly or indirectly, the quotations of your orator, or any of them, and from having, maintaining or permitting, any telegraph or other wire running into or through his, its or their office, over which said quotations are passing and from aiding, abetting or assisting, directly or indirectly, any person,

firm or corporation in receiving, using, selling or distributing said quotations, until it, he or they, or the person, firm or corporation for which they or any of them shall be acting, shall have first lawfully acquired the right to receive said quotations either by contract or purchase from your orator, or, with your orator's consent and approval, from one of the telegraph companies authorized by your orator to distribute said quotations. And that your orator may have such other and further relief in the premises as will fully protect your orator's property right in said quotations, and as to your honors shall seem meet.

May it please your Honors to grant unto your orator a preliminary and permanent injunction against the said defendant as above prayed, and also a writ of subpoena of the United States directed to said Clarence P. Hunt commanding him on a day certain to appear and answer this bill, and to abide by and perform such decree as may be entered by this court.

NEW YORK COTTON EXCHANGE,
By HENRY CRAFT, *Its Counsel.*

HENRY W. TAFT,
HENRY S. ROBBINS,
Counsel for Complainant.

The appellant first filed a plea to the jurisdiction traversing that allegation of the bill wherein the jurisdictional amount was averred. After a replication to the plea and proof the court sustained the jurisdiction. Then the appellant filed an answer putting in issue the material allegations of the bill of complaint. So much of the answer as is deemed material to be set forth is as follows:

For all the said reasons, and also for the reasons stated above, making void and illegal the contract of the 14th July, 1903, set out in the bill, this defendant says and states and shows that the plaintiff had no right to prescribe the said form of application, and no right to require the making of any such application, and no right to refuse or to require the Gold & Stock Telegraph Co., or the Western Union Telegraph Co., to refuse the persons applying and willing to pay therefor the quotations afore-

said, because such persons refused to make such application. Whether or not, since shortly after the making of the contract of the 14th July, 1903, set out in the bill, every person receiving the quotations of prices from the plaintiff's cotton exchange through telegraph, except those persons before then receiving from the Western Union Telegraph Co., who have procured injunctions against that company preventing it withholding or withdrawing the quotations from them have executed and delivered applications similar in form to the form stated in the bill—this defendant does not know and cannot admit. He, therefore, denies the statement and calls for strict proof.

It is true that this defendant has not made any application to the plaintiff, or the Western Union Telegraph Company, or the Gold & Stock Telegraph Company, similar to the form copied in the bill, but he has always been desirous, and even anxious to purchase and pay for and to have the use and benefit of the said quotations. And he has been and is now willing to comply with and conform to any and all reasonable rules and regulations by whomsoever prescribed, in order to obtain such quotations —but the rules and regulations the plaintiff has attempted to impose, as stated in the bill, for the reasons stated in this answer, are not reasonable, but are unjust, oppressive and illegal.

This defendant commenced business in Memphis as broker, dealing in cotton, stocks, grain and provisions about the month of March, 1899, and he made application to the Western Union Telegraph Co., under its designation of the Gold & Stock Telegraph Company, for its cotton quotations by "ticker," and such application was accepted by the said company upon the agreement of this defendant to pay therefor to it $25.00 per month for the said service.

The contract entered into was in writing, and a true copy thereof is filed with and as a part of this answer and marked Exhibit "A." The original is held subject to the order of the court for the purposes of this suit.

This defendant has continued business as broker, receiving the quotations contracted for under the said contract from its date until the present time. He has in all particulars complied with the condition of the said contract, and the said contract has always remained in force,

and he has paid the Western Union Telegraph Company, or the Gold & Stock Telegraph Company, the sum of $25.00 for each month's service as contracted for in the said contract. He has built up and has now a considerable business, at great expense and labor, and by the investment of considerable sums of money and the value and profits of his business depend largely upon the receipt and use of the said quotations by and through the said "ticker," under and in accordance with the said contract. To revoke or cancel the said contract and deny this defendant the benefit thereof, and the use of the cotton quotations by and through the ticker, as agreed therein, would in effect destroy his business as a business of profit and value, and would produce and cause him irreparable injury and damage.

This information or quotations is received by or through the "ticker" automatically—a specimen of which is made a part of this answer and marked Exhibit "B."

These letters and figures are at once put upon a blackboard in the office of this defendant for reference and use, and are used immediately in his office for the transaction of his business. The letters and figures upon the said exhibit indicate New York as the place from which the quotations are sent, the time of the sending, the month the cotton has been sold for.

The number of cents per pound the cotton is sold for is not stated, but it is assumed to be known, both in New York and at the point of receipt of the quotations, and only the hundredths of a cent constituting part of the price are put down in figures, thus:

N. Y. means New York; 1139 means the hour and minute of sending.

M. H. means March cotton; 67 means eleven and sixty-seven hundredths of a cent per pound.

This defendant has transacted no business, except that of broker, as stated above, for which he has been and is duly licensed under the laws of the State of Tennessee. Every transaction made by him has been evidenced by a report made by him to his customers, upon a form—a copy of which is filed herewith as a part of this answer and marked Exhibit "C." Such report evidences the consummation of the contract.

In every instance such contract, as appears by Exhibit "C" has had upon it, as appears upon said exhibit, the following:

"All orders for the purchase or sale of any article, are received and executed with the distinct understanding that *actual delivery* is contemplated where order is executed, and that the party giving the order so understands and agrees."

At some time shortly after July 14th, 1903, this defendant was informed that the plaintiff had required and proposed to compel the Gold & Stock Telegraph Company, or the Western Union Telegraph Company to revoke and cancel the contract between it and this defendant (Exhibit "A" to this answer), and to take the ticker out of the office of the defendant, and to withdraw and cease furnishing him the quotations contracted for in the said contract. Such action would practically have destroyed the profitable part of the business of this defendant.

Thereupon this defendant and other persons similarly engaged in the business of broker on July 31st, 1903, filed in the Chancery Court of Shelby County, Tennessee, their bill against the Western Union Telegraph Company, the only corporation or person, other than these defendants, within the jurisdiction of the State of Tennessee, a party to or connected with the contract aforesaid (Exhibit "A" hereto), or representing the Gold & Stock Telegraph Company, the other party to such contract.

The said suit stands as No. 12,613 in the Chancery Court of Shelby County, and to the record and proceedings in the same this defendant here refers as a part of this his answer. In the bill the facts on which the plaintiffs in the said suit, including this defendant, based their rights, as stated in this answer, were substantially set out, as more fully appears by the bill now here referred to for particularity and certainty. The prayer of the bill was that the plaintiffs in that suit, which included this defendant, severally have a writ of injunction restraining the Western Union Telegraph Company—the defendant to the said suit—from removing from the places of business of the plaintiffs in the said suit, respectively, just so long as they respectfully paid the price therefor the "tickers" then in their respective places of business and commanding and requiring the said Western Union Telegraph Company, the defendant, to afford this defendant and the

other plaintiff in the said suit, respectively, through the means of the ticker aforesaid, so in their places of business respectively, quotations, just as long as the said Western Union Telegraph Company, the defendant, furnished such quotations by such means to any other persons in the city of Memphis, engaged in the same business with this defendant and the other plaintiff, whilst they complied with its reasonable regulations and paid for such service. Upon the presentation of the said bill to the chancellor of the said Chancery Court of Shelby County an order was made requiring the clerk and master of the said court, upon the executing of the bond prescribed, to issue an order in the language of the prayer of the bill, restraining and prohibiting the defendant, the Western Union Telegraph Company, as prayed therein, until the further order of the court. Leave was granted the defendant in the said suit, upon a day's notice, to move to discharge the said stop order, but until the further action of the court it was declared that the order should be retained. It was dated July 31st, 1903. The bond required was executed and filed and approved. The language of the writ of injunction issued by the Clerk and Master of the said Chancery Court under the said order of the chancellor was that the defendant, the Western Union Telegraph Company, desist and refrain from removing from the place of business the plaintiffs in the said suit respectively, just so long as they paid the premium therefor, the "ticker" then in their respective offices, and that the said Western Union Telegraph Company afford said plaintiffs in the said suit respectively, through means of such "ticker" quotations, just as long as they furnished such quotations by such means to other persons in Memphis engaged in the same business with said plaintiffs, respectively, whilst they complied with the reasonable regulations and paid for such service.

On April 28th, 1904, the Western Union Telegraph Company, the defendant in said suit, filed its answer therein. It made the contract between the plaintiff in this suit and the Gold & Stock Telegraph Company, of the 14th July, 1903, copied in the bill herein, an exhibit to such answer, and based its defense to the said suit, so in the Chancery Court of Shelby County, substantially upon such contract. This defendant, upon the authority of such contract of July 14th, 1903, and from information

and belief, state and aver that the said answer was so filed by the Western Union Telegraph Company, at the request and by the direction and for the benefit of the plaintiff in this suit, the New York Cotton Exchange and also for the Gold & Stock Telegraph Company, and with the view and for the purpose of asserting and setting up for him, and in his belief, the very same matters and grounds and causes of action as are set up and relied upon in this suit.

After the said answer had been filed the said cause came on to be heard in the Chancery Court of Shelby County on August 12th, 1904. It was then decreed that the stop order aforesaid or injunction be discharged, and that the bill of the plaintiff in the said suit be dismissed at their costs. The plaintiffs in the said suit, including this defendant, prayed an appeal from that decree to the Supreme Court to sit at Jackson on the first Monday of April, 1905, and such appeal was granted and perfected, and the said cause taken thereby to the said Supreme Court.

The same was heard in the Supreme Court on the 15th June, 1905. That court decreed that the decree of the Chancery Court of Shelby County dissolving the injunction and dismissing the bill of the plaintiffs in the said suit, including this defendant, in the then condition of the record, as appears from a written memorandum made by the chief justice of the Supreme Court for the court, which memorandum was made a part of the decree of the Supreme Court and also of the *procedendo* issued from that court to the Chancery Court was erroneous and was reversed, vacated and set aside, and that the said suit be remanded to the Chancery Court for further proceedings, which the decree declared should consist of the taking of proof, if desired, and the final hearing of the said cause on its merits in the said Chancery Court.

The said Supreme Court further decreed that pending and until the final hearing of the said suit upon the merits, the injunction and stop order as granted by the Chancery Court as before stated, be retained and continued in force.

In the memorandum or opinion made by the chief justice, and forming a part of the decree of the Supreme Court, it was stated, among other things: "The answer presented as a defense to the claim of complainants' con-

tracts with the various exchanges of the country which, if made, raised a serious question for the consideration of the court. We think that in the absence of such contracts it cannot be maintained that the defendant company could remove the tickers of these complainants as long as they complied with the reasonable regulations of the defendant and declined to furnish them with further quotations, which were indispensable to the successful conduct of their business, and at the same time supply these instruments, and through them this valuable information to competitors in business in the same community. That the Telegraph Company is a quasi public corporation, bound to serve the public without discrimination, and have reasonable charges, is established by all the authorities, and especially in this State in the case of Marr vs. The Western Union Telegraph Co., 85 Tenn. 356. This being so, we think its only answer to the claim of the complainants lies in the contracts which it avers. Upon this averment, two questions arise. One of fact—the other of law.

The first is—have such contracts been made, and if so, what is their import? This can only be answered by competent evidence. This is not furnished by the specimen copy of one of these contracts made an exhibit to this answer. We think that in the absence of competent evidence as to the making and stipulation of these contracts the court should not rule upon them.

The next question is one of law. Conceding their existence and their nature as averred, do they furnish a sufficient answer to the demand of the complainants? As to this question the courts are divided. In the present condition of the record it is impossible for this court to decide the question."

And the court said further in the same memorandum: "In view of this difference of judicial opinion, we think it will be improper in the face of a record imperfect as this is, to intimate an opinion on this question. It will be time enough to do this when it is presented upon a record bringing up in perfect condition one or all these contracts. As to the dissolution of the injunction, we think as the injunction was the very life of this bill, having been granted, it should not have been dissolved until the cause was finally heard."

After the decree of the Supreme Court, the *procedendo*

from that court was sent down to the Chancery Court of Shelby County, and filed therein and the decree of the Supreme Court, including the said *procedendo,* was made a part of a decree of the Chancery Court, and the said suit is now pending in the said Chancery Court, awaiting the taking of testimony as directed by the Supreme Court, and in the meantime the injunction granted as before stated remains in full force and effect.

This defendant has remained in the use and enjoyment of the ticker, placed in his place of business, as aforesaid, by the Western Union Telegraph Company, under and by virtue of the contract of about May 1st, 1899, and the injunction so granted and issued by the Chancery Court of Shelby County and the Supreme Court of Tennessee, as they still are, and in that way and by that means he has been and is receiving and the Western Union Telegraph Company has been and is furnishing him the continuous quotations described in the bill and in this answer.

This defendant states and shows that the said suit, so pending in the Chancery Court of Shelby County, embraces and comprehends the same subject matter as this present suit, that it is between the same parties, plaintiffs and defendants as this present suit; that the same questions of fact and law are involved and to be decided as in this suit, and that the decree to be pronounced will adjudicate and dispose of the same matters of controversy that are sought to be adjudicated and disposed of in this suit.

This defendant, therefore, pleads and relies upon the pendency of the said suit in the Chancery Court of Shelby County, Tennessee, in bar of the further prosecution of this suit, and prays that he may have the benefit of this plea as a matter of defense by way of answer.

This defendant further claims and insists and states and shows that this court has not the jurisdiction to grant or issue the injunction herein prayed for, because of the injunction aforesaid granted, and in force in the said suit pending in the Chancery Court of Shelby County, Tennessee, as the injunction herein prayed for would require and compel the violation and breach of the injunction granted and in force in the Chancery Court of Shelby County, and the undoing of what has been done and is to be done in the course of the said suit.

This defendant states and shows further, that at no time has he wrongfully or illegally obtained or acquired

or had the use of the quotations claimed by the plaintiff to belong to it, as appears by its bill, nor has he done or permitted anything contrary to the provisions and meaning of the contract, entered into between him and the Western Union Telegraph Company of about May 1st, 1899.

For a further defense, this defendant states and shows that the Western Union Telegraph Company and the Gold Stock Telegraph Company, with the consent and by the permission and under the authority of the plaintiff in this suit, has been since the 14th July, 1903, and still is selling, delivering and furnishing to a number of brokers in the city of Memphis, doing substantially the same business as this defendant, the continuous quotations aforesaid of the plaintiff, sent from its cotton exchange in New York City, in the manner before stated, without limit or restraint or condition, and by means of "ticker" in his respective place of business, upon terms substantially the same as those set out in the contract between this defendant and the Gold & Stock Telegraph Company of ——.

And this defendant submits and states and shows that the plaintiff cannot lawfully withhold and refuse such quotations to this defendant upon the same terms upon which he has been and is being received by the said other brokers. And he submits further that the withholding and refusal of the plaintiff of such quotations to this defendant is wrongful and in violation of law. All the allegations and statements of the bill to the contrary are now here denied.

Further answering this defendant says and states and shows that upon the facts alleged in the bill, the remedy of the plaintiff against him for the alleged causes of action, set out in the bill, is complete and adequate at law, and that this court has no jurisdiction on the grounds set out in the bill, or any other grounds to maintain this suit.

And for further defense this defendant states and shows that many years prior to 1903, in order to obtain revenue from its quotations and information, the complainant inaugurated the arrangement with the said telegraph companies, by which said telegraph companies were to pay it for said quotations and information and dispense and sell the same throughout the country. And defendant shows further that this was done for the express purpose

of building up the kind of business in which defendant is engaged. The complainant and the telegraph companies say and understand that if this kind of business could be built up, the persons engaged therein would need the quotations and information which the said complainant and the telegraph companies could, under said agreement, furnish them. It was a part of said arrangement that all persons who might engage in said line of business should be assured they could at all times receive said quotations and information for a reasonable compensation. The plan thus inaugurated proved successful. This defendant and other people throughout the country, on the faith and assurance that said arrangement would be faithfully and continuously carried out by the complainant and said telegraph companies, entered into said business, and have now large sums of money invested therein. And this defendant now avers upon these facts that the complainant is estopped from arbitrarily denying him the use in his said business of said quotations and information. CLARENCE P. HUNT.

Proof was taken, agreements of counsel entered into. The trial judge sustained the bill of complaint, and granted the relief prayed for (Tr. p. 88) upon the authority of the Board of Trade v. Christie Grain & Stock Co., 198 U. S. 236 *et seq.*

The appellant submits that this case is to be differentiated from the above cited case, and assigns as errors:

I.

The court erred in adjudging and determining that the sum in controversy involved the sum of $2,000.00, exclusive of interest and costs.

II.

The court erred in adjudging, upon the matters and things set forth by the plaintiff, it had jurisdiction to grant the injunction and pronounce the final decree appealed from. (Tr. p. 93.)

ARGUMENT.

I.

The case at bar is clearly a different case from the case of the Board of Trade v. The Christie Grain Co. The matter in controversy in the Christie case was not the subject of argument or pleading, so far as the record discloses. The trial judge affirmed in this case that the jurisdictional amount existed, because, in his opinion, the integrity of the contract between the appellee and the Telegraph Company was involved, and he held that the subject matter of the controversy was the value of that contract. (Tr. p. 72.)

The bill is a *quia timet* one, pure and simple. It is neither alleged nor proven that the contract between the appellee and the Telegraph Company was impaired, stopped, impeded or interfered with. The allegation is that such unauthorized receipt and use of said quotations by the appellant is calculated to, and in time will, if not entirely stopped, seriously impair the value to your orator, of its quotations. (Tr. p. 14.)

The proof established that the value of the contract between the appellee and the Telegraph Company is the amount in dollars and cents received and paid, and from the hour of entering into the contract up to the date of the testimony of Mr. King, the manager of the exchange, the exchange had received the price agreed to be paid for the information gathered on the floor of the New York Cotton Exchange.

So the question is, is the subject matter of this litigation, that fear and apprehension that unless the appellant is restrained, the value of the contract between the appellee and the Telegraph Company will be depreciated? Thus far its

value has not been affected. The price is stipulated for, it receives, and the appellant has paid the Telegraph Company for quotations which he receives from it.

This bill is not framed on the theory that the quotations are received surreptitiously, or by theft, but is founded upon the theory that the quotations which were being received under contractual relations between the appellant and the Telegraph Company, and protected by the injunctive process of the State court, may be dealt with in the Federal court, because their receipt and use is calculated to, and in time will, if not entirely stopped, seriously impair the value of the quotations to the appellee.

The contract between the appellee and the Telegraph Company provides as follows:

> The Telegraph Company, however, shall not be required to remove any of its tickers or wires or to discontinue service furnished by any other means, which are under restraint by injunction of the courts during the pendency of such injunction. * * *
>
> In cases brought against the Telegraph Company the exchange may defend by its own counsel at its own expense in the name of the Telegraph Company.
>
> In cases where an application has not been approved by the exchange, and the legal proceedings shall be thereupon commenced against the Telgraph Company on account of its refusal to furnish said quotations, the Telegraph Company shall, at its own cost and expense, defend such litigation, and shall use diligent efforts to secure the removal of any injunction obtained in said causes, in cases in which the exchange may so desire or request. (Tr. p. 8.)

And the compensation provided for the privilege of receiving and selling said quotations, necessarily embraces the right to sell such quotations to persons who occupy the relation of the appellant to the Telegraph Company, protected by the injunctive process of a court of competent jurisdiction.

The question, therefore, is not an analogous one to the cases that hold for jurisdictional purposes, the amount involved is the value of the complainant's right to conduct its business without being subject to the burden of a nuisance, an illegal tax, or a threatened appropriation of property under an unconstitutional act, of the value of $2,000.00, exclusive of interest and costs.

In Scott v. Donnell, 165 U. S. 107, it appeared by the agreed statement of facts that previous to the filing of the bill and temporary injunction granted in that cause, the State constable seized and threatened to seize in future all intoxicating liquor whatsoever, coming into the State from other States and foreign countries, and to carry out in full all the provisions of the dispensary law of January 2, 1895, and that the value of the right to import ale, wines and other liquors, products of other States and countries, is of the value of $2,000.00 and upward, and the difference in the price to the consumer like the plaintiff, of such liquor bought at the State dispensary of South Carolina, and bought out of the State, is about 50 or 75 per cent. in favor of imported liquors, and this court, speaking by Mr. Justice Shiras, said:

> Such statement sufficiently concedes the pecuniary value of the plaintiff's rights in controversy, exceeds the value of $2,000.00, nor can it be reasonably claimed that the plaintiff must postpone his application to the Circuit Court, as a court of equity, until his property to an amount exceeding in value $2,000.00 has been actually seized and confiscated, and when the preventive remedy by injunction would be of no avail. Ibid. 114-115.

In the case of the Railroad v. Ward, 2 Black. 485, this court held in a suit to abate a railroad bridge as a nuisance, the value of the right to maintain the bridge, and not the amount of complainant's damages, determines jurisdiction on appeal. (Page 492.)

The mere allegation in the bill of complaint that the amount involved in matters in dispute, exclusive of interest and costs, is much more than the sum of $2,000.00, did not confer jurisdiction on the Circuit Court.

North American, etc., Ins. Co. v. Morrison, 178 U. S. 262-267.

In the case at bar there is no question as to the damage, proximate or remote. The appellee gets all it contracted to get under its contract with the Telegraph Company. There is no pretense that during the life of that contract, from its inception up to the trial of the case in the court below, its value was impaired or affected prejudicially. The jurisdiction was sustained upon testimony of experts, one of whom was a member of the New York Cotton Exchange, and the other a member of the Chicago Board of Trade. The former, on his direct examination, in answer to the following question:

"What would be the right referred to in the last question? What would be its value approximately, in your opinion, to the members of the New York Cotton Exchange, the right to control quotations in the way it is now done?" said: "I would say a large amount."

"Would it exceed $2,000.00?" A. "Very much."

It is to be noted that Mr. King, the witness, and the superintendent of the New York Cotton Exchange, nowhere in his testimony states that the matter in controversy between the appellant and the appellee is or exceeds $2,000.00. He does say that the value to the New York Cotton Exchange to confine its quotations to such persons as shall sign the application, set out in the bill of complaint, etc., would make a difference of fully one million dollars a year, but he qualifies and explains this answer in reply to the following question:

"You think that is the value of that right?"

"A. No. What I mean is that that amount of business is diverted from the exchange."

And then follows the two questions and answers above quoted. (Tr. p. 85.)

But this witness leaves nothing to uncertainty, and he is by far the best qualified man to speak on the subject, for in answer to the following question, on cross-examination, "What do you say was the value of this contract independent of the business diverted from the New York Cotton Exchange?" he says: "The value in dollars and cents was the amount the exchange receives from the Western Union Telegraph Company." (Tr. p. 87.)

The member of the Chicago Board of Trade who testifies as a witness, says he can only estimate or approximate the value of the right, for the reason that the volume of speculative business in the country changes, and changes the value of the right. If there is a large volume of speculative business in cotton, the value to the New York Cotton Exchange would probably amount to a million dollars, while a depressed market, it would not amount to more than two hundred thousand or three hundred thousand dollars a year.

Manifestly, the object sought to be accomplished by the bill in this case is stopping the receipt by the appellant of continuous cotton quotations which he is receiving by virtue of the injunctive process in a suit instituted by him against the Western Union Telegraph Company, and now pending in the Chancery Court of Shelby County, Tennessee, and necessarily the amount in controversy is determinable by the value to the appellee of the accomplishment of that object.

McNeill v. Ry. Co., 202 U. S. 543-558.

McDaniel v. Traylor, 196 U. S. 415-422.

In the last cited case this court, by Mr. Justice Harlan, held that the value of the joint interest of the plaintiffs in the lands

in question was the matter in dispute, and consequently sustained the jurisdiction of the Circuit Court. (Page 422.)

But here, the value of the contract between the appellee and the Telegraph Company is not the matter of dispute, and neither is the right to control the disseminating of the markets gathered upon the floor of the Cotton Exchange, by the appellee, the matter in dispute. The matter in dispute is a narrow one. It is the right to prevent the appellant from receiving the continuous quotations from the Telegraph Company, which he pays for, pending a litigation in the State courts. And, consequently, a wholly different object from the right to prevent the getting at the knowledge of a trade secret, or of quotations of the market surreptitiously, and using the knowledge so obtained. That was the matter in controversy in the Board of Trade v. Christie Grain & Stock Co., *supra,* and in the several cases cited by Mr. Justice Holmes, on page 251.

Here, there is no violation of a duty or trust. The market quotations are not received surreptitiously. The appellant is not depriving the appellee of the protection of the law. The appellee receives the price for its quotations, the Telegraph Company receives its monthly price from the appellant, precisely the same sum it sells those quotations to twenty other persons and firms in the City of Memphis. Indeed, the appellant does not share with the appellee its property right in its quotations. It pays for them, and obtains them by virtue of the injunctive process of the Court of Chancery, which is provided for by the terms of the contract between the appellee and the Telegraph Company.

Prior to the 31st of July, 1903, the Telegraph Company collected these quotations on the floor of the exchange, transmitted them to customers, one of whom was the appellant. After the 31st of July, the appellee itself collected these quo-

tations, and delivered them to the telegraph companies, to be transmitted to their customers, and among other things provided the Telegraph Company to have the right to serve the quotations to members of the exchange at their offices or branch offices, and to all persons, firms, corporations or organizations in New York and elsewhere, whenever the Telegraph Company may desire to serve them; but not to persons, firms or corporations who or which may be directly or indirectly in the promotion or maintenance of bucket shops.

The limitation placed upon the right to receive these continuous cotton quotations is set forth in the form of application required to be made, and it was because the appellant would not sign that application that the controversy arose. There is no doubt but that reasonable contracts limiting the right of communicating the cotton quotations are valid, for it has been held repeatedly that a limited publication does not entitle the public to acquire the right of use.

In the Board of Trade v. the Christie Grain & Stock Co., *supra,* this court, speaking by Mr. Justice Holmes, said:

> Time is of the essence in matters like this, and it fairly may be said, if the contracts with the plaintiffs are clear, the information will not become public property until the plaintiff has gained its reward.
> 198 U. S. 251.

In the case of the Board of Trade v. Cella Commission Co., 145 Fed. 28, the Circuit Court of Appeals for the Eighth Circuit reversed the decree of the court below and affirmed that the amount of value involved in that suit was the value of the right that the complainant sought to protect from invasion, or the object to be gained by the bill.

It is to be observed that in that suit the contract between the Chicago Board of Trade and the Telegraph Company obligated the former to use all reasonable endeavors to pro-

tect its property right in the quotations against the purloiners thereof, and the Circuit Court of Appeals adjudged *inter alia* that the subject matter of the controversy involved the jurisdictional amount required.

In the case at bar, there is no such provision in the contract with the telegraph companies, for the telegraph companies are not required to remove any of their tickers or wires or discontinue service furnished by any other means which are under restraint by injunction of the courts, during the pendency of such injunction. Indeed, the Telegraph Company is to defend these suits at its own expense, and use diligent efforts to secure the removal of any injunctions obtained in cases in which the exchange may so desire or request. The whole tenor of the contract is to put the burden upon the Telegraph Company of a suit against it or by it for the prevention or stoppage of competitive use.

In the case at bar there is no competitive use. The Telegraph Company gets the price it exacts, and the appellee gets the consideration for the use of the information sold by it the telegraph companies.

We therefore respectfully submit that there is no evidence tending to establish that the matter in dispute between the parties to this suit amounts to $2,000.00, exclusive of interest and costs, and the learned trial judge committed an error in so holding.

II.

The second assignment of error involves the determination of the question of whether, upon the facts and circumstances of this case, the Circuit Court of the United States, in equity, had jurisdiction to grant the injunction herein.

In order to present this question fully to the court, it is necessary to state the attending circumstances, together with the precise issue involved in the record.

The appellant is a member of the Memphis Cotton Exchange, and engaged as a broker in the City of Memphis since 1899, and has been in contractual relations with the Western Union Telegraph Company since that time, using a ticker, which works automatically and registers continuously the market quotations, which are transcribed on a blackboard, open to the public, as rapidly as they appear upon the tape of the register. (Tr. p. 74.) The appellant is prepared to deliver all the cotton or other commodity which he sells, and to pay for all that he purchases, and every contract which he makes has a stipulation to the effect that actual delivery is contemplated and understood. (Tr. p. 77.)

In August of 1903 the appellee began furnishing to the telegraph companies market reports for sale, and provided a form of application to be used, and made that a condition precedent to the right of the Telegraph Company to furnish these market reports, and thus arose the controversy between the Telegraph Company and the appellee upon the one side, and the appellant upon the other.

The appellant insisted that the limitation upon the former customers of the Telegraph Company was an unreasonable one, and filed his bill in the Chancery Court, and therein obtained a mandatory writ of injunction.

The mere placing upon a blackboard in the city of Memphis of the market reports operates to make them public property, and they cease to be of further pecuniary value. Some of these market reports are upon the blackboard of Ganong & Fitzgerald about five minutes before the appellant receives his, and his are placed upon a blackboard in his office, in about a minute after they are registered upon the ticker.

In the Board of Trade v. Christie Grain & Stock Co., *supra*, page 250, it is observed:

> The plaintiff does not lose its rights by communicating the result to persons, even if many, in confidential relations to itself, under a contract not to make public, and strangers to the trust will be restrained from getting at the knowledge by inducing a breach of trust, and using knowledge obtained by such a breach.

In the case at bar the appellant is not a stranger to the trust, and therefore is not to be restrained, because he does not get at the knowledge which he requires by inducing a breach of trust, nor is he using the knowledge obtained by such a breach. He gets at that knowledge by paying for it, as others pay for it, and by having it furnished to him under the operation of a mandatory writ, and the only trouble in this case is that the appellant has not signed the application required to be signed, as a condition precedent, in order to obtain the market quotations from the Telegraph Company.

The transactions on the Chicago Board of Trade and the New York Cotton Exchange and the New York Stock Exchange are legal transactions, and enforcible, and the record discloses that so far as the appellant is concerned every transaction which he makes is a legal transaction, within the cases adjudged by this court.

> Clews v. Jamison, 182 U. S. 461, and the authorities cited by Mr. Justice Peckham on pages 489, 490, 491.

The law of Tennessee, however, is peculiar, in that it provides that the intention of one of the parties to a contract for the sale of stock, bonds, cotton or other commodity for future delivery, not to perform the contract by actual delivery, or by the acceptance of actual delivery, makes the contract a wagering contract, and consequently it is out of all reason to require an applicant for continuous quotations to agree that every contract respecting the purchase or sale, or the purchase and sale of any cotton, shall be that contract wherein both parties shall contemplate actual performance, or that

he shall contemplate actual performance, and the further agreement that he will not use, nor allow any one else to use, such quotations, or any of them, where a wagering contract is contemplated, or in a bucket shop. That is certainly an unreasonable provision, because these quotations are furnished for public use, and when transcribed upon the tape of the ticker, open to the public automatically, or therefrom transcribed upon a blackboard, the person who has purchased the use of them has no power whatever over the use other persons may make of them.

Whether this case be viewed as a case analogous to a trade secret, or the use of valuable information gathered by others, upon the facts disclosed by the record, the court was without jurisdiction to grant the final decree enjoining the appellant.

High on Injunction, Sec. 19 and authorities cited in the note to the 4th Ed. on page 27.

It is only where equity fastens an obligation upon the conscience of a party not to use or divulge his knowledge that it has jurisdiction to enforce the obligation by injunction, and that evidently is the limitation in the case of the Board of Trade v. the Christie Company.

Here there is no obligation fastened upon the conscience of the appellant, but the enforcement of a legal right, and then recurs the question, has the Federal Court, in equity, jurisdiction to enjoin him from receiving the benefit of an injunction sued out in a State court by him, and under which alone he obtains the use of the ticker that registers the market quotations of the New York Cotton Exchange? In short, the Federal Court has practically enjoined the operation of the judgment and decree of the State court.

The only question upon this branch of the case is whether it comes within the provision of the Revised Statutes, Section 720, which is to the effect that no writ of injunction shall be

granted by a court of the United States to stay proceedings of any court except in matters of bankruptcy. It cannot be successfully answered that this is not a proceeding wherein the injunction does stay, and was sued out for the purpose of staying the proceedings in the State court, because the appellant cannot have the benefit of the judgment of the State court without being in contempt of the Federal court, for that decree enjoins him, his agents, employes and servants from using, selling or distributing, directly or indirectly, the quotations of the complainant, or any of them, and from having, maintaining or permitting any telegraph or other wire run into or through his office on which said quotations are passing, etc., which is simply enjoining him from having the benefit of the injunction granted by the State court, wherein the Western Union Telegraph Company was restrained from removing from his place of business the ticker therein, and required to furnish to him, by means of the ticker, the quotations just as long as it furnished them to other persons in the city of Memphis engaged in similar business, and he complied with its reasonable regulations, and paid therefor. (Tr. pp. 89-31.) The form of the decree is immaterial. Its substance is the matter for consideration.

It was open to the appellee to direct the conduct of the suit in the State court, and that suit could have been, at the proper time, if the matter in controversy here amounts to $2,000.00, exclusive of interest and costs, removed to the Federal Court, and therein determined, for in that suit the Western Union Telegraph Company was to all intents and purposes the representative of the New York Cotton Exchange.

In the U. S. v. Parkhurst-Davis Mercantile Co., 176 U. S. 317, this court held in an opinion by Mr. Justice Brewer that it was within the provisions of Section 720 of the Revised Statutes.

In that case it was sought to restrain the defendants from enforcing in the courts of the State of Kansas certain claims against two persons, members of the Prairie band of the Pottawatomie Indians, residing on a reserve within the limits of Kansas, and Mr. Justice Brewer, speaking for this court, said:

> Upon these admissions and facts, the case comes clearly within the provisions of Section 720 of the Revised Statutes, to the effect that no writ of injunction shall be granted by a court of the United States to stay proceedings in any court of a State, excepting in matters of bankruptcy. Citing:
> Peck v. Jenness, 7 How. 612-625.
> Watson v. Jones, 13 Wallace 679-719.
> Haynes v. Carpenter, 91 U. S. 254-257.

In Watson v. Jones, *supra,* this court, in an opinion by Mr. Justice Miller, held that an unexecuted order made in an appellate court, to be enforced by a court of primary jurisdiction, cannot be interfered with by any other court by way of injunction, especially by a court of the United States, by reason of the Act of Congress of March 2, 1793. (Pages 719-720.)

This provision of the Act of Congress seems to have been first construed and applied in Diggs v. Woolford, 4 Cranch 179. In that case a decree of the Circuit Court had enjoined the defendant from proceeding in a suit pending in a State Court, and this court reversed the decree, because it had no jurisdiction to enjoin proceedings in a State court. It was followed in Peck v. Jenness, *supra,* in an opinion of this court, delivered by Mr. Justice Grier.

In the case of Dyall v. Reynolds, 96 U. S. 340, this court, speaking by Mr. Justice Swayne, said:

> The gravamen of what is desired as to Reynolds is an injunction to prevent his proceeding at law in a State court. Without this all else is of no account. Any other remedy would be unavailing.

Here the gravamen of the bill is to prevent the appellant from receiving the benefit of the judicial decree of the State court, and it is practically a bill to enjoin his doing so, and is within the spirit of the Revised Statute, if not within its letter. (Sec. 720.)

In the Central, etc., Bank v. Stephens, 169 U. S. 463, this court held that a State court could not restrain parties from proceeding with a sale under a decree of the Circuit Court of the United States.

In that case Mr. Justice Shiras reviewed the authorities and approved the language of Mr. Justice Grier in Peck v. Jenness, *supra,* that "State courts are exempt from all interference by the Federal tribunals, but they are destitute of all power to restrain either process or proceedings in the National courts. Circuit courts and State courts act separately and independently of each other, and in their respective spheres of action the processes issued by the one are as far beyond the reach of the other as if the line of division between them was traced by landmarks and monuments visible to the eye." (Page 460.)

In the case at bar the appellant, under the peril of a contempt proceeding, is deprived of the benefit of the judgment of the State court, and the effect of the decree is to enjoin him from enforcing the decree of the State court. The decree operates upon him as effectively as though it in terms enjoined him from proceeding in the Chancery Court of the State, and is the exercise of a power over him as a litigant in the State court.

Thomas B Fearley

Atty. for Appellant.

Wm H Lamb

Atty. for Appellant.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1906.

No. 314

CLARENCE F. HUNT,
Appellant,
vs.
THE NEW YORK CUTTON EXCHANGE

Appeal from the Circuit Court of the United States for the Western District of Tennessee.

BRIEF AND ARGUMENT FOR APPELLEE.

HENRY S. ROBBINS,
For Appellee.

HENRY W. TAFT,
HENRY CRAFT,
Of Counsel.

SOUTHERN-TARBELL PRINTING CO., MEMPHIS.

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CLARENCE P. HUNT, *Appellant,* vs. THE NEW YORK COTTON EXCHANGE.	Appeal from the Circuit Court of the United States for the Western District of Tennessee.

STATEMENT.

This is an appeal directly to this court upon the ground that "jurisdiction of the [Circuit] court is in issue."

Appellant is the defendant in a chancery suit brought by the New York Cotton Exchange to further its efforts to confine its market quotations to persons using them for lawful purposes. In its material facts it is not distinguishable from *Board of Trade of the City of Chicago* v. *Christie Grain & Stock Company,* 198 U. S., 236.

Appellee in July 1903 adopted a plan for the re-

stricted distribution of its quotations, similar to that of the Chicago Board of Trade. "The telegraph companies all receive the quotations under a contract not to furnish them to any bucket shop or place where they are used as a basis for bets or illegal contracts. To that end they agree to submit applications to the" appellee "for investigation, and require the applicant, if satisfactory, to make a contract with the telegraph company and" appellee "which, if observed, confines the information within a circle of persons all contracting with" appellee.

The bill contained the usual jurisdictional averment that the amount involved exceeds $2,000. (Rec., 14.) Appellant filed a plea to the jurisdiction, alleging the contrary. (Rec., 21.)

The court heard evidence in open court upon the issue raised by a replication to this plea, and overruled the plea to the jurisdiction. (Rec., 23.)

Thereupon appellant answered and appellee filed its replication. These pleadings, among other things, disclosed that, at the time appellee made its present contracts with the telegraph companies providing for a restricted distribution of its quotations, appellant was receiving appellee's continuous quotations from the Western Union Telegraph Company under a contract with that company determinable at its will. (Rec., 30, 67, 68.) Upon being called upon by the telegraph company, after it had made its present contract with appellee, to sign the application for the quotations required by that contract, appellant, in a suit in a state court to which appellee was not made a

party, secured a temporary injunction restraining the telegraph company from withdrawing the quotations. This injunction was in force when the suit at bar was instituted.

The prayer of the bill at bar is that appellant be enjoined from receiving these quotations until he shall have complied with the requirements imposed by appellee's contracts with the telegraph companies.

Under this state of the pleadings appellant contended that the pendency of this state court suit was a legal obstacle to a decree for appellee by reason of section 720 of the Federal statutes, providing that "the writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a state," etc. The Circuit Court ignored this defense, treated the pendency of the state court suit as *res inter alios acta* and entered a final decree permanently enjoining appellant from receiving or using appellee's market quotations until he shall have "first lawfully acquired the right to receive said quotations, either by contract or purchase from complainant, or, with the complainant's consent and approval, from one of the telegraph companies authorized by complainant to distribute said quotations." (Rec., 88.)

Thereupon appellant, electing to come directly to this court on the question of jurisdiction alone instead of taking the whole case to the Circuit Court of Appeals for review, perfected the present appeal, and here assigns only two errors (Rec., 93). One is based upon the overruling of the plea to jurisdiction, and the other is as follows:

"Wherein it held thereafter, that upon the matters

and things set forth, by the plaintiff, it had jurisdiction to grant the injunction in this case, and to pronounce the final decree herein."

Under this assignment of error the learned counsel for appellant says:

"The only question upon this branch of the case is whether it comes within the provision of the Revised Statutes, Sec. 720, which is to the effect that no writ of injunction shall be granted by a court of the United States to stay proceedings of any court, except in matters of bankruptcy."

ARGUMENT.

I.

THE AMOUNT IN DISPUTE EXCEEDS $2,000, AND IT WAS NOT ERROR TO OVERRULE THE PLEA TO JURISDICTION.

Upon this issue the burden of proof was upon appellant. In

Sheppard v. *Graves*, 14 How., 504, 510,

this court said that:

"Although in the courts of the United States it is necessary to set forth the grounds of their cognizance as courts of limited jurisdiction, yet wherever jurisdiction shall be averred in the pleadings, in conformity with the laws creating those courts, it must be taken *prima facie* as existing, and that it is incumbent on him who would impeach that jurisdiction for causes *dehors* the pleading, to allege and prove such causes: that the necessity for the allegation and the burden of sustaining it by proof, both rest upon the party taking the exception."

The rule thus prescribed has become the settled practice. In

Adams v. *Shirk*, 55 C. C. A., 25 (7th Cir.); 117 Fed., 801.

the jurisdictional question being one of citizenship instead of amount, the court said:

"The proper allegation of jurisdictional facts, *prima facie*, was true. * * * Under the plea in the present case, * * * the burden most assuredly was upon the moving party. Plaintiff in error introduced no evidence on the subject."

Pennsylvania Co. v. *Bay*, 138 Fed., 203.

There the sufficiency of the jurisdictional amount

was denied, but the defendant failed to put in any proof upon that issue. The Circuit Court said:

"The allegation of jurisdictional facts is *prima facie* true, and the burden of the affirmative averment in a plea in abatement of facts showing such want of jurisdiction is upon the party making such averment."

To the same effect are:

Wiemer v. *Louisville Water Co.*, 130 Fed., 244.
Butters v. *Carney*, 127 Fed., 622.

Not only is the burden upon the defendant to prove the amount involved to be less than $2,000, but he must prove it by a decided preponderance and to a legal certainty.

Wetmore v. *Rymer*, 169 U. S., 115.

There the lower court dismissed upon the ground that the amount involved did not exceed $2,000, but this court in reversing said that:

"A suit cannot be properly dismissed by a Circuit Court as not substantially involving a controversy within its jurisdiction, unless the facts when made to appear on the record, create a legal certainty of that conclusion."

Gage v. *Pumpelly*, 108 U. S., 164.

There, the question being whether the amount involved was sufficient to sustain an appeal, this court said:

"There is no such decided preponderance of the evidence in this case against jurisdiction as to make it our duty to dismiss the appeal," etc.

The next question is, what is the thing or subject-matter, whose value is to determine jurisdiction in the suit at bar.

When appellee made its present contract with the

telegraph companies, appellant was paying one of them $25 per month for the quotations, and his counsel contended upon the trial of the plea, and tried his case on the theory, that this furnished the measure of the value of the matter in controversy. The trial judge rejected this view and stated that it was the value of the contract between appellee and the telegraph companies. (Rec., 72.)

In suits which seek no money decree but the protection of a property or contract right by injunction or like relief, the jurisdictional test is the *value of the right* sought to be protected or enforced.

Miss., etc., R. R. Co. v. *Ward*, 2 Black., 485, where, in a suit to abate a nuisance, this court held that plaintiff need not show that his damage had amounted to the jurisdictional amount, but that the jurisdiction was to be tested by the value of the object sought by the bill, and that object was the removal of the nuisance.

Texas & P. Ry. Co. v. *Kuteman*, 4 C. C. A., 503 (5th Cir.), 54 Fed., 547.

There to a suit to enjoin a shipper from prosecuting sundry suits for overcharges in freight it was objected that the amount involved did not exceed $2,000, but the court in overruling this objection said:

"The amount in dispute is the value of the object to be gained by the bill. * * * The maintenance of its rates is the real subject of dispute, and the object of the bill, and the value of this object must be considered."

Whitman v. *Hubbell*, 30 Fed., 81.

There in a suit to restrain the maintenance in a street of an awning adjoining plaintiff's premises, it

was contended that the amount involved was not sufficient to sustain a removal. The court in overruling the objection, said:

"The matter in dispute is the value of the right to maintain the awning, not the amount of damage done by it to the plaintiff." In

Board of Trade v. *Cella Com. Co.* (C. C. A. 8th Cir.), 145 Fed., 28,

a suit similar to the one at bar, brought by the Chicago Board of Trade to enforce a similar restricted distribution of its quotations, the court, in deciding that the amount involved exceeded $2,000, said:

"In a suit to enjoin a threatened or continued commission of certain acts the amount or value involved is the value of the right which the complainant seeks to protect from invasion, or of the object to be gained by the bill. It is not the sum he might recover in an action at law for the damage already sustained, nor is he required to wait until it reaches the jurisdictional amount. * * *

In the case before us the Board of Trade claims a right of property in the market quotations gathered upon the floor of its exchange, and also the right to control their distribution and use. Upon the faith of the validity of these claims, it entered into a contract with two telegraph companies for the distribution of the quotations to those approved by it, which yields it an annual revenue of $30,000. The contract obligates the Board of Trade to use all reasonable endeavors to protect its property right in the quotations against purloiners thereof. The contentions of the defendants and their acts are wholly at variance with the existence of any such right of property or control. They assert, somewhat inconsistently, that the quotations are the result of gambling transactions, and therefore not the subject of property, and also that they are affected with a public interest, and the right to the general use by all desiring them cannot be prohibited or restrained by the Board of Trade. It is

obvious that, if the position of the defendants be sustained, the rights of the Board of Trade would either cease to exist or become of merely nominal value. The real value of the property claimed arises from the right of selection and exclusion of those desiring the use thereof, and to prescribe terms and conditions; and it is this property and the accompanying right, which, denied by the defendants but yielding the revenue above indicated, are sought to be protected by the bill of complaint. This is a sufficient showing of a jurisdictional amount or value in controversy."

Other cases applying the same principle are:

McNeill v. *Southern Ry. Co.*, 202 U. S., 558.

Hutchinson v. *Beckham*, 55 C. C. A., 333; 118 Fed., 399.

Butchers' etc., Co. v. *Louisville & N. R. Co.*, 14 C. C. A., 290; 67 Fed., 35.

Scott v. *Donald*, 165 U. S., 107.

Amelia Milling Co. v. *Tennessee Coal Co.*, 123 Fed., 811.

Humes v. *City*, 93 Fed., 857.

Nashville Ry. Co. v. *McConnell*, 82 Fed., 65.

Smith v. *Bivens*, 56 Fed., 352.

Lanning v. *Osborne*, 79 Fed., 657.

Nor is a party to be denied a right to resort to a federal court for the protection of his property, because the value of the right asserted is not capable of being *accurately* measured in dollars and cents.

In *Northern Pac. R. R. Co.* v. *Cunningham*, 103 Fed., 708, the question being whether the amount involved exceeded $2,000, the Circuit Court said:

"The complainant asks protection for more than 12,000 acres of grazing lands from further injury by a continuing trespass. The evidence does not enable me to fix precisely the value of the right which is the

subject of controversy, but the amount of damage which has been done certainly is not the measure of value. * * * Considering the number of acres involved, I am satisfied that the value of the protection which the complainant asks for is more than $2,000; and it is not necessary, in order to sustain the jurisdiction of the court, for the complainant to show the amount in controversy with any greater accuracy."

In *Butters* v. *Carney,* 127 Fed., 622, upon the question of the jurisdictional amount the court said:

"So far as relates to the plea, it is not the value of the defendant's claim that constitutes the amount in controversy, but it is the value of the whole property which plaintiff claims, as described in his complaint. * * * The value of the property, as shown by all the testimony, is somewhat of a speculative character, depending to a great extent upon the use to be made of it, and, so far as the millsite is concerned, the opportunities or certainty of obtaining ore and a supply of water. The burden of proof to sustain the plea is cast upon the defendant, and he has not established it by a preponderance of the evidence by proofs such as the law requires in cases of this character."

See, also,

Sparrow v. *Strong,* 3 Wall., 97, 103.

Speaking generally, this suit relates to *property.* Appellee contends that its quotations and the right to control, by the restrictions here disclosed, their distribution, constitute property. It costs appellee $4,500 yearly to assemble and furnish the quotations to telegraph companies, and from their sale through the contracts shown in this record, appellee realizes $16,980 per year. (Rec., 59.)

If property, the quotations and the right to control their distribution constitute property of a peculiar character. As appellant did not file an answer in support of his plea, every allegation of the bill pertinent to

the issues on the plea is, in deciding the plea, to be taken as true. Of such are the following:

"That said quotations are of such a peculiar kind of property that their value depends on your orator's power to confine the transmission and distribution thereof to such telegraph companies and other distributing agencies as will contract therefor with your orator, and that if any person or corporation is permitted to promptly acquire said quotations surreptitiously or by theft, or without paying your orator therefor, such person or corporation can promptly give the same to numerous other persons throughout the United States and the telegraph companies contracting with your orator for said quotations would thus be put to a disadvantage in competition with such persons so obtaining the said quotations without paying your orator therefor." (Rec., 3.)

"And that if even one person within the jurisdiction of this Court be allowed to secure such quotations without the restrictions as to the use thereof which your orator imposes as aforesaid, such person can furnish them to all the bucket shops and other persons within the United States desiring them, and thus entirely defeat the efforts of your orator to prevent their use in bucket shops as a basis of their illegal bets." (Rec., 14.)

A right of property in a thing, especially in such a thing as this market news, includes the exclusive right to use it, to sell, or not to sell, it to others, and to determine at what price a sale shall be made, *and to whom it shall be sold,* or, as it is sometimes expressed, the "right of selection and exclusion." Such is the nature and extent of the right in its quotations which appellee asserts in this suit.

It would seem true also that, subject to the right of the court under section 5 of Act of March 3, 1887, to protect itself against all improper or collusive at-

tempts of litigants to impose upon its jurisdiction, the nature and extent of the right of property sought to be protected or enforced, must be determined from the bill alone, and without reference to admissions subsequently made by the defendant seeking or tending to minimize the extent of the right in dispute. But this becomes an immaterial inquiry here because the right asserted in the bill is to its full extent denied by appellant's answer.

It avers:

"This defendant denies therefore, that the plaintiff has any property in any quotations of prices, it sells and delivers to any telegraph company to be transmitted after the same are delivered. * * * The plaintiff has not capacity or power to own any such quotations upon their arrival in the State of Tennessee, or after their delivery here." (Rec., 26.)

Respecting the contract through which appellee derives its revenue from these quotations and seeks to enforce this restricted distribution thereof, the answer avers (Rec., 27):

"He denies that the rights he possessed when the said contract was entered into * * * were, or could be affected by any such contract, and he claims and insists as to him and his right, the said contract was wholly without effect or force. * * * It is also illegal and void in attempting and undertaking to create and preserve a monopoly in the plaintiff as to the sale and use to be made of the quotations after they have reached the State of Tennessee and in undertaking to confine the sale and distribution of such quotations to such persons as the plaintiff arbitrarily elect shall be allowed to purchase, or receive the same, and to exclude without reason and on no sufficient ground all persons objectionable to the plaintiff willing to pay therefor and desiring to obtain

such quotations,—from purchasing or acquiring or using the same.

The said contract is illegal and void because it provides that the Telegraph Company shall not furnish quotations to any person whomsoever until such person shall have submitted an application in writing to the plaintiff in a form prescribed by it, nor until the plaintiff had approved the application," etc.

Again, the answer insists that after allowing the quotations to be distributed for many years, they have become "*quasi* public property," and impressed with a public use so that appellee could not withhold the quotations from the public generally, as by the contract it seeks to do. (Rec., 28.)

The answer further insists (Rec., 29) that the form of application prescribed by appellee to be signed by those desiring the quotations is "unreasonable and oppressive" and "contrived and intended to create and perpetuate in plaintiff a monopoly in the said quotations." (Rec., 29.)

Thus appellant in effect disputes all the rights claimed by appellee in these quotations. Hence, the matter in dispute is this property right claimed by appellee in its quotations. The pecuniary value of this right, therefore, may well be determined by considering what effect a decision on these claims against appellee would have (1) upon the salable value to appellee of these quotations, and (2) upon appellee's right of selection and exclusion.

On the first question it is incumbent upon appellant, having the burden of proof, to establish by a "decided preponderance of the evidence" that this salable value of these quotations would not,

by a decision against appellee, be impaired more than $2,000. Upon this question the fact that the telegraph companies are now under contract to pay a certain price per year for the quotations would not materially help appellant, because these contracts are determinable at the end of any year. (Rec., 60, 61.) Under those contracts all recipients of quotations are inhibited from re-distributing them except (under certain restrictions) to their own agents and correspondents. (Rec., 12.) It should not be presumed that upon a decision against this right of appellee to thus confine the quotations the telegraph companies would, after the expiration of the current year, continue to pay so large a price for them. In the absence of any clear evidence to the contrary it should be assumed that a decision against this property right claimed by appellee in quotations, from whose sale a yearly revenue of $16,980 is derived, would impair its pecuniary value more than $2,000.

Aside from its effect on this salable value of the quotations, it is clear that a decision against appellee would put an end to its right of selection and exclusion.

The second question, then, is, what is the value of this right? As this right to thus select and exclude is obtained by appellee through its contracts with these telegraph companies, it is perhaps accurate enough to say that the amount here involved is the value to appellee of these contracts.

Upon neither of these questions did appellant introduce any evidence—at least any direct evidence—to show what was the value of the right appellee seeks to

protect by this suit. He neither attempted to prove that the salable value of the quotations would not, by a decision against appellee, be impaired to the extent of $2,000, nor what was the value of its right of selection and exclusion in this distribution. In fact, he did not try the issue raised by the plea upon the theory that the test of jurisdiction was the value of appellee's right in these quotations. On the contrary, he introduced in evidence his contract with one of these telegraph companies, wherein he was to pay $25 per month for the quotations, and contended that this showed " the matter in controversy," and "that it is just worth $25." (Rec., 68.)

He did introduce the present contracts between appellee and the two distributing telegraph companies, but these, instead of sustaining him upon the issue, were—at least in the absence of other evidence—sufficient to show that the amount involved exceeded $2,000. This was expressly so decided in *Board of Trade* v. *Cella Commission Company,* already cited, and in *Board of Trade* v. *Thomson Com. Co.,* 103 Fed., 902, where Judge Seaman held that upon the face of the Chicago Board of Trade contract the amount involved exceeded the jurisdictional requirement. These two cases are not distinguishable from the case at bar. Under its contract the Chicago Board of Trade was obligated to use all reasonable efforts to protect its property right, while appellee by its contract is not. But this does not seem to be a material distinction in view of the fact that both contracts were of such short duration, each being terminable at the expiration of a year. Nor is there a distinc-

tion in the fact that the revenue derived by the Board of Trade under its contract ($30,000) exceeds somewhat that derived by appellee under its contract ($16,980).

Appellant also introduced two earlier contracts between appellee and the Western Union Telegraph Company. One of these (Rec., 48) is dated February 18, 1903, and provided for the same restricted distribution of the quotations as do the present contracts. The yearly revenue from the quotations was fixed at $10,000, as against $13,584 in appellee's present contract with the same company. This difference is due to the fact that the expense of gathering the quotations was in the contract of February 18, 1903, placed upon the telegraph company, while in the contract now in force it is assumed by appellee.

The other was a contract between appellee and the same telegraph company, dated March 18, 1884, and in force up to February 18, 1903. (Rec., 42.) This contract does not impose any restrictions upon the distribution of the quotations or otherwise safeguard the property right therein, and in this respect it differs from the contract of February 18, 1903, and the present contracts. Under this first contract the price paid to appellee by the telegraph company (up to February 1st, 1903), was $2,500 per annum. Hence, this contract does not sustain appellant's contention. On the contrary the conclusion deducible from it and the subsequent contracts is that the Western Union Telegraph Company is willing to pay $7,500 a year more for the quotations under a contract which safeguards appellee's property right therein and re-

stricts distribution thereof, than under a contract which does not do so.

Appellant introduced no other evidence tending to show the amount involved, and thus clearly failed to sustain the burden cast upon him to establish the truth of the plea by such decided preponderance of the evidence as the law requires.

On behalf of appellee two witnesses testified as experts as to the value of its right of selection and exclusion in the distribution of quotations. One of these, John Hill, a member of the Chicago Board of Trade who had charge of its protracted campaign against bucket-shops, including the extensive litigation which resulted in the decision of this court in *Board of Trade* v. *Christie Company, supra,* testified that in his opinion appellee's right to confine its quotations as provided in its contract was worth "a great many thousands of dollars." (Rec., 79, 80.) The other witness, Mr. King, appellee's superintendent, testified that in his opinion the value to appellee of this right very much exceeded $2,000.

Again, appellant testified that his business is that of accepting speculative trades and that his contracts for the future delivery of cotton amount to at least half a million bales a year, and that they are of a character to be placed upon appellee's exchange through its members. (Rec., 75, 76.) If all this business were carried to appellee's exchange the commissions for executing it would be $75,000. (See p. 97 of Rules of Exchange, forming part of the record.) Appellant's answer also admits that its failure to get these quotations "would in effect destroy

his business as a business of profit and value." If the use of these quotations is of such value to one person, is it not apparent that the right to confine their use throughout the United States to such persons as will contribute business to, or at least not divert business from, appellee's exchange, must be of immense pecuniary value to appellee and its members?

The foregoing constitutes all the evidence introduced by either party on the question of the value of the right sought to be enforced or protected by this suit. It is submitted that it amply justified the trial court in finding against appellant on his plea to the jurisdiction.

II.

THE SECOND ASSIGNMENT OF ERROR DOES NOT RAISE A QUESTION OF JURISDICTION, AND HENCE DOES NOT PRESENT A QUESTION FOR DECISION UPON THIS APPEAL.

Upon an appeal like the present one, the Act of 1891 provides that "the question of jurisdiction alone shall be certified to the Supreme Court from the court below for decision."

Judgment having been rendered on the merits in favor of appellee, appellant had his election to (1) have the question of jurisdiction certified directly to this court, or (2) carry the whole case to the Circuit Court of Appeals. Having chosen the former course, the only question here is whether the trial court had jurisdiction.

McLish v. *Roff*, 141 U. S., 661, 668.
United States v. *Jahn*, 155 U. S., 109, 114.

The inquiry then is, whether this second question—

the pendency of a prior suit between appellant and the telegraph company in the state court—constitutes a question of jurisdiction within this statute.

"Jurisdiction" is a word of different meanings. In its more restricted and accurate sense it means "power to decide." Without this any judgment is subject to direct or collateral attack as an absolute nullity. Jurisdiction of this kind is two-fold: (1) of the subject-matter, and (2) of the person. If either is wanting, there is no jurisdiction.

Hence this court has uniformly upheld its jurisdiction to review, upon direct appeal or writ of error under section 5 of the Act of 1891, any such question of jurisdiction,—whether of the subject-matter or of the person of the defendant. The question here first discussed is one of jurisdiction in this sense.

In a looser sense a court of equity is said to have no "jurisdiction" where there is a remedy at law. But as, under the Federal judicial system, the same court has jurisdiction of equity and common law cases, this objection really is, not that the court, as such, has no jurisdiction at all, but that the suit is on the wrong side of the court.

So a court is said to be without jurisdiction, where another court has previously acquired jurisdiction.

But in both these cases the court is required to decide whether, in the one case, the remedy at law is adequate, and in the other, which court did first get jurisdiction, and its decision binds the parties. Hence it has power to decide, and it cannot be said with accuracy that the court is without jurisdiction.

In the case at bar the defense appellant is seeking to make is that of a prior suit pending in the state court, as will appear from the following extract from his answer (Rec., 34):

"This defendant states and shows that the said suit, so pending in the Chancery Court of Shelby County, embraces and comprehends the same subject-matter as this present suit, that it is between the same parties, plaintiffs and defendants as this present suit; that the same questions of fact and law are involved and to be decided as in this suit, and that the decree to be pronounced will adjudicate and dispose of the same matters of controversy that are sought to be adjudicated and disposed of in this suit."

This is followed by a claim that the Circuit Court had no jurisdiction to grant or issue the injunction herein prayed for.

To sustain this defense appellant relies on Section 720 of the Revised Statutes, which reads as follows:

"The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

And appellant in his brief says (italics ours):

"The second assignment of error involves the determination of the question of whether, upon the facts and circumstances of this case, the Circuit Court of the United States *in equity,* had jurisdiction to grant the injunction herein."

But the question thus presented is only whether the pendency of the prior state court suit is a bar to relief in the suit at bar and this, as respects jurisdiction, is not different in its nature from

the question whether in a suit in chancery the remedy is not at law. In both cases this court has several times decided that the question thus raised was not one of jurisdiction within the act of 1891.

Thus the objection that the remedy is at law does not present a question of jurisdiction.

Smith v. *McKay,* 161 U. S., 355.
Blythe v. *Hinckley,* 173 U. S., 501, 507.

Nor does the objection that the court cannot grant the relief sought because of prior state court litigation pending, or constituting *res adjudicata.*

Blythe v. *Hinckley,* 173 U. S., 501, 507.
Huntington v. *Laidley,* 176 U. S., 668, 679.
Louisville Trust Co. v. *Knott,* 191 U. S., 225.
Bache v. *Hunt,* 193 U. S., 523.

In *Huntington* v. *Laidley,* this court said:

"Under the circumstances of this case, the question whether the proceedings in any or all of the suits, at law or in equity in the state court, afforded a defense—either by way of *res adjudicata,* or because of any control acquired by the state court over the subject-matter—to this bill in the Circuit Court of the United States, was not a question affecting the jurisdiction of that court, but was a question affecting the merits of the cause, and as such to be tried and determined by that court in the exercise of its jurisdiction."

It is difficult to see any distinction between these cases and the one at bar. If the question in those cases—which of two courts, one state and one federal, had first acquired such jurisdiction or control of a case as will entitle it to appoint a receiver,—is an objection, not of the want of power, but of the want of equity in the complainant's bill, so is the ques-

tion in the case at bar—whether appellant should not be enjoined from receiving property, although he is seeking to obtain it through a suit brought by him against a third party in a state court. No distinction can be predicated upon the fact that in the former cases the principle applicable arises out of the general law and in the case at bar it is declared by statute.

That statute is not, and does not profess to be, one defining jurisdiction of federal courts, but is only a part of the large body of statutory law enacted by Congress to control those courts in the decision of their cases. The question whether this statute applies to a particular case must be raised by pleadings and evidence. Appellant felt it incumbent upon him to offer in evidence a record of the state court case. (Rec., 68.) It became then the duty of the Circuit Court, to decide whether the statute applied to such a case as the one at bar. This was the exercise of jurisdiction, for, as this court said in

Ill. Cen. R. R. Co. v. *Adams*, 180 U. S., 34:

"Jurisdiction is the right to put the wheels of justice in motion and to proceed to the final determination of a cause upon the pleadings and evidence."

The second question presented by appellant's brief was, therefore, not a question of jurisdiction and does not arise upon this appeal.

This will become more obvious by considering the nature and merits of this second question.

In the first place it is settled by abundant decisions that the prior pendency of a suit (not involving the court's possession of the *res*) in one jurisdiction is no

bar to a like suit, even between the same parties, in another jurisdiction, and that within this rule a state court and a federal court (even within that state) are courts of different jurisdictions.

Gordon v. *Gilfoil,* 99 U. S., 168.
Stanton v. *Embrey,* 93 U. S., 548.
Insurance Co. v. *Brune's Assignee,* 96 U. S., 588.
Merritt v. *American Barge Co.,* 24 C. C. A., 530; 79 Fed., 228.
Shaw v. *Lyman,* 79 Fed., 2.
Defiance Water Co. v. *City,* 100 Fed., 178.
Marshall v. *Otto,* 59 Fed., 249.
Hurst v. *Everett,* 21 Fed., 218.

In *Gordon* v. *Gilfoil, supra,* a plea was interposed that the court was "without jurisdiction" because of the pendency of a prior suit in the state court, but this court held the objection to jurisdiction was "destitute of foundation," and said (italics ours):

"What effect the bringing of this suit, *via ordinaria* may have had on the order of seizure and sale [state court suit], it is not necessary to determine. It is possible that it superseded it. But the pendency of that proceeding, when the suit was commenced, cannot affect the validity of the proceedings in this suit, nor *the jurisdiction of the court in respect thereof.*"

A fortiori, a suit in the federal court, such as the one at bar, brought by one who is *not a party* to a prior state court suit, and against whom a judgment of the state court would therefore not be *res adjudicata,* cannot be defeated by the pendency of the state court suit.

The result of these cases is that each suit is entitled to proceed in the usual order to a decree. Nor can the state court defeat this constitutional right of a party to sue in the federal court by issuing a temporary injunction, which ordinarily only aims to preserve the *status* in that case until the final hearing.

Nor is this situation changed by the possibility that the federal court decree may conflict with that thereafter entered in the state court suit. Such inconsistency should not be presumed. On the contrary, as the courts are enforcing the same law, the presumption should be that both decrees would conform to the law and thus be the same.

Nor can it be said that, because the final decree of the federal court enjoins the receipt and use of the same property which the defendant in the federal court suit is, as plaintiff in the state court, seeking to get from a third party (or even the plaintiff in the federal court suit), the latter court is thereby granting an injunction "to stay proceedings in any court of the state" within the meaning of section 720. Such is not the meaning of that section. It is not aimed at inconsistent decrees; nor does it seek to paralyze action in the regular course by federal courts. The decree in the case at bar does not enjoin the state court nor appellant from proceeding there. This is made clear by the opinion of the Circuit Court in the case at bar (144 Fed., 511), and the following cases:

Bank of Kentucky v. *Stone,* 88 Fed., 383.

In that case a bank filed a bill against the State Auditor, State Treasurer, and Secretary of State, to

restrain the assessment and collection of certain taxes for the City of Louisville, and the answer insisted that a *mandamus* proceeding in the state court by the City of Frankfort was commenced before the action in the federal court and was still pending, and that a preliminary injunction by the federal court would be "in effect an injunction against that proceeding in the state court," but the Circuit Court of Appeals, speaking through Judge Taft (Mr. Justice Harlan concurring), said:

"It is settled that the pendency of a suit in a state court is no bar to a suit upon the same subject-matter in this court. * * * The injunction which we shall grant may be offered as a defense by the board of valuation and assessment in the court where the mandamus proceeding is pending, just as a judgment rendered in one of two pending suits for the same cause of action may be offered by supplemental pleading in the other. The sufficiency of the defense will be for that court. We do not enjoin any suit at all by our order; all we do enjoin is the certification of the taxes. That does not require the defendants to disobey an order of any other court, or restrain their prosecution of a suit therein."

So the decree at bar does not require appellant to disobey an order of the state court, nor restrain his prosecution of the state court suit. True, a judgment now in the state court suit would not be of benefit to appellant for two reasons: first, because it would be, as respects appellee, *res inter alios acta;* and, second, because in the regular course of proceeding a final decree has been entered in one of two concurrent suits. But this latter is always the result to one party or the other in concurrent suits in two jurisdictions.

Woodbury v. *Allegheny Ry. Co.*, 72 Fed., 371.

There a trustee in a railroad mortgage commenced a suit in a state court to foreclose a mortgage. The defendant railroad company in another suit in the same court obtained an injunction restraining such trustee from proceeding with the foreclosure. The bondholders then requested this trustee to proceed to foreclose in another jurisdiction, and, upon its refusal, they filed a bill in the federal court for the foreclosure of the same mortgage, and the court held that the state court suit and the injunction therein did not deprive the federal court of the power to proceed to a decree for foreclosure of the property of the railroad in both jurisdictions, the court saying:

"That the mere filing of a bill to foreclose in the New York state court did not oust the jurisdiction of the circuit court for the Western District of Pennsylvania is clear. * * * While the New York court enjoined the trustee from bringing all suits upon the matters involved in the suit before it, and the trustee prudently obeyed the order, yet the mere pendency of that suit, or the subsequent restraining order upon the trustee, did not, in the absence of a final decree by that court, oust the jurisdiction of the United States circuit court of the Western District of Pennsylvania, or prevent it from entertaining a suit and determining all questions properly brought before it, although the same questions might be involved in the suit pending and undetermined in the first-named court."

That case is like the case at bar in that in each an injunctional order of the state court was issued, not against the plaintiff in the federal court, but against a third person.

The foregoing amply demonstrates that this second

question is not a question of jurisdiction, but that, if it were, it was correctly decided by the lower court.

It is therefore respectfully submitted that the decree of the Circuit Court should be affirmed.

HENRY S. ROBBINS,
For Appellee.

HENRY W. TAFT,
HENRY CRAFT,
Of Counsel.

Supreme Court of the United States.

No. 314.—October Term, 1906.

Clarence P. Hunt, Appellant, *vs.* The New York Cotton Exchange. } Appeal from the Circuit Court of the United States for the Western District of Tennessee.

[April 8, 1907.]

This is a bill in equity brought by the New York Cotton Exchange, a New York corporation, against appellant, a citizen of Tennessee, in the Circuit Court of the United States for the Western District of Tennessee, to enjoin him from receiving and using the quotations of sales made upon the Exchange. The case is here on questions of jurisdiction, and only a synopsis of the principal facts alleged is necessary.

The Exchange is a private corporation under the laws of New York, with 450 members, and owns in the city of New York a building for the use of its members, and conducts therein on every business day cotton sales for present and future delivery, the transfers aggregating many million bales of cotton annually. The purchases and sales for future delivery are permitted to be made and are made only during market hours and by open *viva voce* bidding, and the knowledge of the prices thus made has become a species of property of such value that telegraph companies pay large sums of money to the Exchange for the privilege of receiving instantaneously the quotations and distributing the same to customers and many persons in the United States who are engaged in the cotton commission business. Such persons are willing to pay and do pay the telegraph companies therefor, and the Exchange realizes from the distribution of the quotations through the telegraph companies large sums of money annually. The quotations are such peculiar kind of property that their value depends upon the power of the Exchange to confine the transmission and distribution thereof to such telegraph companies and their distributing agencies as will contract therefor with the Exchange, and, that, if any person or corporation is permitted to promptly acquire the quotations surreptitiously or by theft, or without paying the Exchange therefor, such person or corporation can promptly give the same to numerous other persons, and the telegraph companies contracting with the Exchange would thus be put at a disadvantage in competition with such persons so obtaining the quotations without pay for

them, and would thereby be deterred from continuing to pay the Exchange the prices provided in the contracts with the telegraph companies. The manner of collecting and distributing the quotations is detailed, and yearly the cost to the Exchange, it is alleged, is $4,500. Prior to 1893 the Exchange permitted the telegraph companies to gather the quotations through their own employes upon the floor of the Exchange building, and to distribute them without any effective restrictions upon the persons entitled thereto, with the result that many persons used the same in conducting so-called "bucket shops," by reason thereof the bucket shop evil assumed such large proportions and became so serious as to materially affect the legitimate transactions upon the floor of the Exchange, and its members were deprived of many customers. The Exchange therefore found it necessary to terminate such right or license of the telegraph companies, and to that end made contracts with them. The contracts are attached to the bill. It is enough to say of them that under them the companies receive the quotations under the condition not to furnish them to any persons, firms or corporations who, or which, may be directly or indirectly engaged in the promotion or maintenance of bucket shops or other places where such continuous quotations are used as a basis for bets or other illegal contracts based upon fluctuations of the prices of cotton dealt in on the Exchange. Nor shall the companies directly or indirectly furnish the quotations to any person, firm or corporation, whether members of the Exchange or not, until such person, firm or corporation shall have submitted an application in writing to the Exchange in such form as it shall provide, and until it has approved of the application. The Exchange has power to revoke its approval. In such event the companies shall cease to furnish the quotations, and if they have installed tickers or wires in the office or place of business of such person, firm or corporation they shall immediately remove the same. This, however, they are not required to do, "or to discontinue service furnished by any other means, which are under restraint by injunctions of the courts during the pendency of the injunction." In case of an application once approved and afterwards disapproved by the Exchange and a suit be commenced against the companies on account of the continuance of the quotations, the Exchange shall defend such suit at its expense and pay all fines, penalties, etc., to which the companies may be subject. In cases where an application has not been approved by the Exchange suits against the companies for the refusal to furnish the quotations shall be defended at the expense of the companies, which shall use diligent efforts to secure the removal of injunctions. If the suit shall be brought against the Exchange it shall defend at its own cost. For the purpose of protecting the companies against the use of quotations originating on the Exchange by parties not entitled to them the

companies may prosecute suits in their own name or that of the Exchange to prevent or stop such competitive use.

The Western Union Telegraph Company has to pay the Exchange for the quotations $13,584 per annum in equal installments of $1,132 at the close of each month. The form of the application is attached to the contract.

It is alleged that all persons receiving the quotations have made applications in the form set out, except in a few instances where persons who were receiving quotations from the companies prior to the execution of the contracts have since the execution thereof secured temporary injunctions (the Exchange not being a party to the suits) to enjoin the companies from withholding or withdrawing the quotations on the ground that such persons were not required to sign such applications or secure the approval of the Exchange.

The defendant, Clarence P. Hunt (appellant), has not made application to either of the companies or the Exchange, nor has the Exchange consented to his receipt of the quotations. On July 14, 1903, he was receiving from the Western Union Telegraph Company the quotations, and the Company on said day notified him of the contract between it and the Exchange, and that under said contract the Company would be required to and would cease furnishing the quotations. Hunt declined to make an application, but in lieu thereof, on July 31, 1903, filed in the Chancery Court of Shelby County, Tennessee, a petition against the Company to enjoin it from ceasing to furnish him said quotations. An *ex parte* injunction was issued. The Company then filed its answer, and, the cause coming on for final hearing on appeal and answer, decree was entered for it. The Supreme Court of the State reversed the decree without deciding the merits, for the reason that the Chancery Court should not have decided the cause on bill and answer, but should have awaited the taking of evidence. The cause is now pending and the injunction is still in force, and that by reason thereof only the Company is furnishing Hunt the quotations. And it is alleged "that such authorized receipt and use of said quotations by said defendant is calculated to and in time will, if not entirely stopped, seriously impair the value to your orator of its quotations, and that if even one person within the jurisdiction of this court be allowed to secure such quotations without restrictions as to the use thereof which your orator imposes as aforesaid, such person can furnish them to all the bucket shops and other persons within the United States desiring them, and thus entirely defeat the efforts of your orator to prevent their use in bucket shops as a basis of their illegal bets, and materially impair the right of your orator to derive a revenue from the distribution of said quotations."

It is further alleged that there is no adequate remedy at law and that "the amount involved and matters in dispute, exclusive of interest and costs, is much more than the sum of $2,000." An injunction was prayed. A preliminary injunction was issued. 144 Fed. Rep. 511.

The appellant filed a plea to the jurisdiction, traversing the allegations of the bill which averred the jurisdictional amount. A replication to the plea was filed. The court sustained the jurisdiction. The appellant then filed an answer, in which he alleged that the contracts with the telegraph companies were illegal and void, that the Exchange had no right to require the making of applications to it and no right to require the companies to refuse the quotations to persons applying therefor, because such persons refused to make application to the Exchange. He admitted that he had not made an application to the Exchange, but had been desirous and even anxious to pay for the use of the quotations and conform to any reasonable rules or regulations by whomsoever prescribed. He alleged that those stated in the appeal were not reasonable, but unjust, oppressive and illegal. And further, that he commenced business in Memphis as a broker, dealing in cotton, stocks, grain and provisions, about the month of March, 1898, and made application to the Western Union Telegraph Company, under its designation of the Gold and Stock Telegraph Company, for its quotations by "ticker." The application was accepted, he agreeing to pay therefor the sum of $25 per month. He has continued to receive the quotations until the present time, and has built up and has now a considerable business, at great expense and labor, and the value and profits of the business depend largely upon the receipt and use of the quotations "by and through the 'ticker,' under and in accordance with the contract." The quotations are received through the "ticker" automatically—a specimen of which is attached to the answer—and the letters and figures are at once put upon a blackboard in his office for reference and use, and are used immediately for the transaction of business. They indicate New York as the place from which the quotations are sent, the time of sending, the month the cotton has been sold for. He has transacted no business except as a broker, as stated, and is duly licensed under the laws of Tennessee. Every transaction made by him is evidenced by a report made to his customers upon a form, a copy of which is attached to the answer. The report evidences the consummation of the contract and has upon it the following:

"All orders for the purchase or sale of any article are received and executed with the distinct understandiug that *actual delivery* is contemplated where order is executed, and that the party giving the order so understands and agrees."

Shortly after July 14, 1903, he was informed that the Exchange had required the Telegraph Company to cancel its contract with him and to take the ticker out of his office and to cease to furnish to him the quotations, thereupon he and other persons similarly engaged in business of broker commenced in the Chancery Court of Shelby County the suit mentioned in the bill. The record and proceedings in the suit are referred to as part of the answer. The bill in that suit prayed an injunction against the Telegraph Company from removing the ticker or refusing to furnish the quotations as long as the Company furnished them to any other person. A preliminary injunction was granted. The Western Union Telegraph Company, the defendant in the suit, answered, and based its defense substantially upon its contract with the Exchange. Hunt, upon the authority of such contract, and upon information and belief, averred that the answer was so filed by the Company at the request and by the direction and for the benefit of the Exchange, "and with the view and for the purpose of asserting and setting up for him, and in his belief, the very same matters and grounds and causes of action as are set up and relied upon in this suit." Upon the hearing the injunction was discharged and the suit dismissed. The decree was reversed by the Supreme Court of the State and the injunction continued in force. The opinion of the Supreme Court is made part of the answer. It appears therefrom that the court considered that a serious question was presented by the defense of the contracts between the telegraph companies and the Exchange. It was said upon the defense two questions arose—one of fact, whether the contract were made; the other of law, whether, conceding the existence of the contracts, did "they furnish a sufficient answer to the demands of the complainants." The court declined to pass upon either question, regarding the record imperfect. The court continued the injunction.

The suit is still pending in the Chancery Court, and by reason of his contract with the company of May 1, 1899, and the injunction Hunt has remained in the use and enjoyment of the ticker, "and is receiving, and the Western Union Telegraph Company has been and is furnishing him, the continuous quotations described in the bill and in this answer." And it is averred that that suit embraces the same questions of fact and law as this present suit and is between the same parties plaintiffs and defendants, and the decree to be pronounced will adjudicate and dispose of the same matters of controversy. That suit is relied on as a bar to the present one, and it is insisted that the Circuit Court had no jurisdiction to grant or issue the injunction prayed for, as "it would require and compel the violation and breach of the injunction granted and in force in the Chancery Court of Shelby County, and the undoing of what has been done and is to be done in the course of the said suit." The other allegations of the

answer are not material to the question now involved. A replication to the answer was filed. The case was submitted on the pleadings and exhibits, agreement of counsel as to certain paragraphs of the bill, evidence taken before the court, which consisted of the record of the suit in Shelby County, and testimony of witnesses. It was decreed that a permanent injunction issue restraining Hunt in accordance with the prayer of the bill. Extracts from the testimony will appear in the opinion of the court.

Mr. Justice McKenna, after stating the case as above, delivered the opinion of the Court.

It will be observed that this case is like the *Board of Trade of the City of Chicago* v. *Christie Grain & Stock Company*, 198 U. S. 236, and we therefore start with some propositions established. It is established that the quotations are property and are entitled to the protection of the law, and that the Exchange "has the right to keep the work which it has done, or paid for doing, to itself." It is, however, contended by appellant that the controversy about them that this suit presents does not involve the value of $2,000, exclusive of interest and costs. This is the issue presented by the plea to the jurisdiction. Appellant contends that the value involved is measured by his contract with the Telegraph Company. The Exchange contends that the matter in dispute is the value of the object sought to be accomplished by the bill. The Circuit Court expressed it to be "the value of the contract between the New York Cotton Exchange and the Western Union Telegraph Company."

On the issue presented by the plea the burden of proof was upon the appellant, and he was required to establish by a preponderance of the evidence that the amout involved was less than the jurisdictional amount. *Sheppard* v. *Graves*, 14 How. 504; *Wetmore* y. *Ryner*, 169 U. S. 115; *Gage* v. *Pumpelly*, 108 U. S. 164; *Adams* v. *Shirk*, 117 Fed. Rep. 801. The only evidence offered by him was his contract with the Telegraph Company in connection with evidence of the manner of his receipt and use of the quotations. This testimony was to the effect that the quotations are commuicated through a ticker, which is a machine with a tape attached to it, that registers the price of cotton, giving the hour. They come sometimes not more than a quarter of a minute or a half of a minute apart, and are copied from the tape and placed upon a blackboard, where all can see them. When new quotations are received the old ones are generally wiped out. The "ticker service is very slow, and the value of it depends on the time it is received. After it is put upon the blackboard it becomes public property, so far as concerns the value of it." And it was testified that a firm by the name of Ganong & Fitzgerald received their quotations about five minutes before appellant, they having better wire service. And also that there was a wire running into the Mem-

phis Cotton Exchange, and that not quite a minute elapsed from the time the ticker registers the market quotations to the time they are registered on the blackboard in the city of Memphis and open to the public. Appellant testified that the amount of his business in cotton for future delivery amounted to one-half million dollars per year, and when he took a trade himself he was prepared to deliver the cotton or commodity in conformity with the agreement between himself and his customer, and goes so far as to write across all orders that actual delivery is contemplated and understood.

A witness on the part of the Exchange testified that he was employed by the Board of Trade as expert to investigate persons who pretended to be brokers, "but who were in fact bucket shops," and was in that position for several years, gathered statistics, made estimates of the volume of business during 1901 and 1902, and has kept pretty well informed ever since as to the number of bucket shops in the United States. And he further testified that trades are carried on in such shops in all commodities that are traded in on the New York Cotton Exchange, New York Stock Exchange and the Chicago Board of Trade. Of the value of the right of the New York Cotton Exchange to control the distribution of its quotation he said: "One can only estimate or approximate the value of the right, for the reason that the volume of speculative business in the country changes, and that changes the value of the right. If there is a large volume of speculative business in cotton the value to the New York Cotton Exchange would probably amount to a million dollars, while with a depressed market it would not amount to more than $200,000 or $300,000." And this is the amount per year.

A superintendent of the Exchange testified to his familiarly in a general way with what is called the independent trader, or independent trade, as distinguished from the trade or traders who carry their transactions to the cotton exchanges of the country, and in a measure with the volume of business done by such persons in an approximate way.

He further testified that the amount of business thus diverted from the Exchange made a difference to the Exchange of fully one million dollars a year, and that the value of the right to control the distribution of the quotations in the manner set out in the bill would very much exceed $2,000.

The witness was unable to state the relative amount of business done on the Exchange in the years 1903, 1904 and 1905, because there was no record of the transactions kept, but he reached the conclusion in regard to the value of the business diverted from the Exchange partly from the evidence given by appellee and partly as to the business done by the bucket shops. And he put the value, "in dollars and cents," of the contract between the Exchange and the Telegraph Company, independent of the amount of business diverted, at the amount the Exchange received from

the Telegraph Company. The following colloquy took place between the witness and counsel for appellant:

"Q. Now, Mr. King, what time, up to this good moment and hour, has that exchange failed to receive the amount of that contract, that is, for giving the Western Union Telegraph Company the right to furnish this information gathered on the floor of the New York Cotton Exchange?

"A. It has not.

"Q. Then in short this here is nothing except fear and apprehension that unless these defendants are restrained that is likely to happen, and affect the value of the contract?

"A. And the business upon the Exchange."

It is manifest that the injury to the Exchange is not the rate paid by the appellant to the Telegraph Company. The purpose of the suit is to enjoin the appellant from receiving, using or selling, directly or indirectly, the Exchange's quotations or permitting or maintaining any wire to his office over which the quotations are passing, or distributing the quotations, until he shall have acquired the right to receive them either by contract of purchase from the Exchange, or with its consent and approval, from one of the Telegraph Companies authorized to distribute them. In other words, the object of the suit is to keep the control of the quotations by the Exchange and its protection from the competition of bucket shops or the identity of its business with that of bucket shops. And the right to the quotations was declared, as we said in *Board of Trade* v. *Christie Grain & Stock Company*, to be property, and the Exchange may keep them to itself or communicate them to others. The object of this suit is to protect that right. The right, therefore, is the matter in dispute, and its value to the Exchange determines the jurisdiction, not the rate paid by appellant to the Telegraph Company. The value of the right was testified to be much greater than $2,000. In *Mississippi & Missouri Railroad Company* v. *Ward*, 2 Black, 485, it was decided that jurisdiction is tested by the value of the object to be gained by the bill. To the same effect is *Board of Trade* v. *Cella Commission Company*, 145 Fed. Rep. 28. In the latter suit the Chicago Board of Trade obtained a decree restraining the use of its continuous quotations by the Cella Commission Company. It was said that the amount or value of such right is not the sum a complainant might recover in an action at law for the damage already sustained, nor is he required to wait until it reaches the jurisdictional amount. The latter declaration is supported by *Scott* v. *Donnell*, 165 U. S. 107.

Counsel for appellant do not deny that jurisdiction is determinable by the object sought to be accomplished by the bill, but they assert that the value of that was speculative and changed with the volume of business. Counsel lay great stress on the testimony of the superintendent of the Exchange, to the effect that the value of the contract between the Exchange

and the Telegraph Company, independent of the business diverted from the Exchange, is, in dollars and cents, the amount it receives from the Telegraph Company. Upon this testimony counsel assert the right claimed by the Exchange to be the narrow one of preventing the appellant from receiving the continuous quotations from the Telegraph Company, which he pays for, pending a litigation in the State courts, and this distinguishes the case from the *Board of Trade* v. *Christie Grain & Stock Company*, and contend that the jurisdictional amount has not been established, as the Telegraph Company is fulfilling its contract with the Exchange. Of the latter contention we have sufficiently indicated our view, and it is only necessary to add that because the value of the quotations to the Exchange varies with the volume of business does not impair the effect of the testimony that the value of its right to control them is "much greater than $2,000." We cannot concur in the conclusion urged by appellant that this case is distinguishable in principle from *Board of Trade* v. *Christie Grain & Stock Company*, either in the right asserted or in the defense against it. Even if the cases were distinguishable, it might still be contended, that would be of no consequence in determining the jurisdictional amount of the matter in dispute. But we will consider the difference claimed to exist between the cases. In the Christie case, it is contended, the right asserted was "to prevent getting at the knowledge of a trade secret or the quotations of the market surreptitiously, and using the knowledge so obtained," and that, it is insisted, was the matter in controversy. "Here," it is said, "there is no violation of a duty or trust The market quotations are not received surreptitiously. The appellant is not depriving the appellee of the protection of the law." In the Christie case the quotations were gotten and published, "in some way not disclosed,' but, it was said, as the defendants did not get them from the telegraph companies authorized to distribute them, had declined to sign contracts satisfactory to the plaintiff (Board of Trade) and denied the plaintiff's rights altogether, it was a reasonable conclusion that they got, and intended to get, their knowledge in a way which was wrongful. This, however, was not said to limit plaintiff's right but to express a violation of it. The right was clearly defined to be, the right of the Board of Trade to keep the quotations to itself or communicate them to others. And this is also the right of the Exchange in the case at bar. It can be violated not only by getting the quotations surreptitiously or "in some way not disclosed," or by getting them from a person forbidden to communicate them.

The next contention of appellant is that the court had no jurisdiction to grant the injunction and pronounce the decree appealed from. The only question involved in this branch of the case, appellant says, is "whether it comes within the provision of the Revised Statutes, section 720, which is to the effect that no writ of injunction shall be granted by a court of the

United States to stay proceedings of any court except in matters of bankruptcy."

And, appellant insists, that this suit necessarily offends that section, because under its decree he "cannot have the benefit of the judgment of the State court without being in contempt of the Federal court," and that he is restrained by the Circuit Court from receiving from the Telegraph Company what the Company is forbidden to refuse him by the State court. To sustain his contention appellant cites *United States* v. *Parkhurst Davis Mercantile Company*, 176 U. S. 317, and cases there referred to. Also *Diggs* v. *Woolford*, 4 Cranch, 179; *Watson* v. *Jones*, 13 Wall. 579; *Dyall* v. *Reynolds*, 96 U. S. 340; *Central etc. Bank* v. *Stevens*, 169 U. S. 433. These cases do not sustain his contention. In *Central Bank* v. *Stevens* it was decided that a State court had no power to enjoin a party whose rights had been adjudged by a Circuit Court of the United States from proceeding with a sale of property under a decree of that court. In the other cases cited, except *Watson* v. *Jones*, the purpose was to directly enjoin parties from proceeding in the State courts. In *Watson* v. *Jones* was considered what identity of parties, rights and relief prayed for were necessary to enable the pendency of an action in one court to be pleaded in bar in another court, and it was said: "The identity in these particulars should be such that if the pending case had already been disposed of, it could be pleaded in bar as a former adjudication of the same matter between the same parties." The principle was also expressed in that case, and sustained by authorities, that the possession of property by one court cannot be interfered with by another, and, that "The act of Congress of March 2, 1793, (now section 720 of the Revised Statutes of the United States,) as construed in *Diggs* v. *Walcott*, 4 Cranch, 179, and *Peck* v. *Jenness*, 7 How. 625, are equally conclusive against any injunctions from the Circuit Court, forbidding the defendants in the case to take possession of property which an unexecuted decree of a State court required the marshal to deliver to them." The case at bar has not that feature, nor has it identity with the case in the Chancery Court of Shelby County. Its parties and purposes are different. The pendency of a suit in a State court does not deprive a Federal court of jurisdiction. *Gordon* v. *Gifford*, 99 U. S. 168; *Insurance Co.* v. *Brunes' Assignee*, 96 U. S. 588; *Stanton et al.* v. *Embrey, Administrator*, 93 U. S. 548; *Merritt* v. *American Barge Co.*, 79 Fed. Rep. 228; *Bank of Kentucky* v. *Stone*, 88 Fed. Rep. 383.

The Circuit Court had jurisdiction, and its decree is

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.